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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 297.

THE COUNTY OF BOONE, APPELLANT,

vs.

THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA AND HORATIO H. HUNNEWELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED NOVEMBER 15, 1887.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 2, 1890.

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1 Pleas before the Honorable David J. Brewer, judge of the circuit court of the United States for the eighth judicial circuit and district of Nebraska, at the term of November, A. D. 1885.

Be it remembered that on the 9th day of June, 1883, a bill was filed in the office of the clerk of said circuit court; which said bill is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

THE COUNTY OF BOONE, Complainant,
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA and HORATIO H. HUNNEWELL, Respondents.

To the honorable judges of the United States circuit court in and for the district of Nebraska:

Humbly complaining, your orator, the County of Boone, one of the counties and municipal corporations of the State of Nebraska, brings this its bill of complaint against the Burlington and Missouri River Railroad Company in Nebraska, a corporation organized under and by virtue of the laws of Nebraska and a citizen of said State, and Horatio H. Hunnewell, a citizen of the State of Massachusetts, and for cause of complaint showeth unto your honors:

1st. That the said Burlington and Missouri River Railroad Company in Nebraska was during all the years of 1873, 1874, 1875, 1876, and 1877 the owner of all the lands and real estate described in the list of the same attached to complainant's bill and referred to herein as Schedule "A."

2 That ever since the year 1872 up to the present time all of said lands were and are legally subject to taxation for all legal purposes in the said county of Boone, Nebraska, and ought in law and equity to have paid and contributed during all of said years to the said State and county their proper and equitable proportion of taxes, and the same ought in law and equity to have been paid by said railroad company to the county and State aforesaid, yet your orator says that no taxes of any kind nor interest or penalties thereon have ever been paid by said railroad company or by any other person upon said lands for any of said years nor has any person ever offered to pay the same or any part thereof.

2nd. Your orator further says that there have been duly and legally assessed and levied upon said lands by the proper authorities of Boone county, Nebraska, taxes for State, county, and school purposes for the following years in about the following amounts:

Year 1873	$15,663 00
" 1874	11,958 00
" 1875	10,417 00
" 1876	15,628 00
" 1877	15,000 00

Which, with legal interest, costs, and penalties thereon, now amount to more than ninety thousand dollars.

3d. Your orator further shows that said Horatio H. Hunnewell on the 4th day of March, 1878, filed his bill of complaint in this court against the other above-named respondents and the board of county commissioners of Boone county and S. P. Bollman, treasurer of said county, to compel the cancellation of said taxes so assessed and levied against said lands and procure a decree of court holding and declaring the same to be illegal and void; that on the same day, without the issue of process, the then board of county commissioners of said Boone county, by M. H. Sessions, a solicitor of this court, pretended to appear and file a stipulation consenting to the said bill being taken *pro confesso* and to the entry of a decree
3 in favor of said complainant for the relief prayed, granting a perpetual injunction against the collection of any of said taxes and declaring the same illegal and void and relieving the said lands from the lien thereof, which said decree was afterwards entered in this court on the 8th day of March, 1878. A copy of the said bill filed by said H. H. Hunnewell is hereto attached, marked Exhibit "A," and referred to for greater certainty as to the allegations and prayer thereof; a copy of said decree is also attached hereto and marked Exhibit "B."

4th. Your orator further shows that for the years 1873 and 1874 there were assessors duly elected and qualified in each of the precincts of said Boone county.

That it is true, as alleged in the bill filed by said Hunnewell, that the board of county commissioners of said county for said years pretended to instruct the said several assessors as therein set forth; but your orator says that said board of county commissioners had no authority in law to give said instructions, and upon information it says that said assessors in making their assessment for said years did not regard or follow said instructions, but proceeded in due form of law to assess and value all lands in said county for said years subject to taxation and did ascertain the fair, true value of the same and did return the same at its true assessable value.

That the assessment and valuation by them made of the lands of said railroad company for said years was a fair, true value for taxable purposes and was the same as placed upon all other lands of a similar kind in said county.

Your orator further shows that all of said assessors for each of said years duly subscribed and took the oath of office prescribed by law, and said oaths were in writing and are now on file in the office of the county clerk of said county.

4 5th. Your orator further shows that said assessors for said years, at the time required by law, duly made out their several assessment lists or rolls, including the assessment of the said lands, and duly returned the same into the office of the county clerk and to said board of county commissioners; that there are now no oaths and certificates of said assessors attached to said assessment lists as required by section 12 of chapter 66 of the General Laws of Nebraska; but your orator, upon information and belief, says that said assessors

did take and subscribe said oaths and certificates and did attach the same to their lists in the manner provided by law, but that said oaths and certificates have been in some manner detached from said lists and mislaid, and after much search and inquiry your orator has been unable to find the same.

Your orator says that for said years taxes were duly levied upon the lands of said company so as aforesaid duly assessed in about the amounts set forth in complainant's bill.

6th. Your orator further says that for the years 1875, 1876, and 1877 no instructions whatever *was* given to the several assessors of said county nor any of them concerning the assessment or valuation of property, except as appears from the following extract from the proceedings of the county commissioners of said county of the dates following:

"February 1st, 1875. * * * On motion, the assessors were furnished the same scale of prices of personal property as for the year 1874."

"February 7th, 1876. * * * On motion, the clerk was instructed to furnish the necessary assessment and census blanks to the precinct assessors, and to notify them to use their own discretion in regard to the valuation of property."

"February 5th, 1877. * * * The assessors were in-
5 structed to see all the personal property and assess the same at a fair cash valuation and examine each tract of real estate."

That in each precinct of said county for each of said years there was an assessor duly elected and qualified and acting as such; that each of said officers duly subscribed and took an oath of office for each of said years, and the same was in writing and is now on file in the office of the county clerk of said county.

That each of said assessors did in each of said years duly proceed to assess and value all the personal property and real estate in their several precincts in said county, including the said lands of said railroad company, at its true and fair value for purposes of taxation; that in so doing they did not follow any instructions of said board of county commissioners, but proceeded lawfully to ascertain and determine the true and fair value of all of said property and so duly valued and assessed the same.

Your orator says that the said lands of said company for said years were, in fact, valued and assessed at a fair and true valuation and one that corresponded with the valuation of all other property in said county.

7th. Your orator further says that each of said assessors for each of said years, at the time required by law, duly made and returned to the office of the county clerk of said county and to the county commissioners thereof a duly prepared assessment list of all the property in his precinct subject to taxation, together with a fair and true valuation of the same; that each of said assessors for each of said years duly subscribed, swore to, and attached to his assessment list an affidavit and certificate, such as is required by section
6 12 of chapter 66 of the General Laws of Nebraska, and the same have ever since been and now are attached thereto and on file in the office of the county clerk of said county.

Copies of said affidavits made by one of said assessors for each of said years are hereto attached and marked respectively Exhibits "C," "D," and "F;" that all of said affidavits for each of said years are substantially of the same tenor and effect as those attached.

Your orator says that said several assessments for said years were regular and valid in all respects; that the same were duly equalized and the taxes duly and legally levied thereon in about the amounts set forth in complainant's bill.

8. Your orator further shows that the officers of said county for the year 1875 duly and legally assessed and levied a tax of 10 mills on the dollar valuation as a special bridge tax for the purpose of building bridges in said county, amounting to the sum of $1,451.49 upon said lands, and also levied a land road tax of 6 mills upon the dollar valuation, which amounted to $1,740.51 upon said lands, and also levied for said year in the several school districts of said county taxes for the payment of interest and principal of school bonds, which said taxes in the several school districts amounted to $958.23 on said lands.

Your orator further shows that for the year 1876 there was also duly assessed and levied in said county a land road tax of 5 mills on each dollar valuation, which on said lands amounted to the sum of $1,450.00; also a tax in the several school districts for the payment of the interest and principal of school bonds, amounting on said lands to the sum of $1,129.25; and also the county officers of said county for said year, to provide a sinking fund for the payment of the principal and interest of the bonds of said county theretofore duly issued, assessed and levied a tax of 16½ mills on the
7 dollar valuation, which on the said lands amounted to the sum of $4,442.27.

9th. Your orator further says that one-half the special bridge tax levied for the year 1875, as set forth above, was afterwards duly cancelled and remitted by said board of county commissioners, and there is only a tax of five mills on the dollar valuation now standing against the lands of said company.

Your orator submits, under the advice of counsel, that said tax was duly and legally levied, that said board of county commissioners had full power and authority to levy the same, and the same is a valid and subsisting lien against all of said lands.

10th. Your orator further submits, under the advice of counsel, that the land road tax and the tax levied for the payment of the interest and principal of school bonds, as set forth above, for the years 1875, 1876, and 1877 are valid and legal taxes, the same were duly and regularly levied for said purposes, and your orator submits that the said board had full power and authority to levy the same, and that the same are now valid and subsisting liens against all of said real estate.

11th. Your orator further shows that the taxes levied for the year 1876 for county sinking fund for county roads, and for the year 1877 for county sinking funds, as set forth above, were legally and regularly levied in all respects; that said county had incurred a

large bonded indebtedness, and that it was its legal duty to provide said fund by taxation for the payment of the interest and principal of the same; that said taxes were not excessive, and your orator submits, under the advice of counsel, that said board of county commissioners had jurisdiction and power to levy the
8 same, and that they are valid and subsisting liens against all of said real estate.

12th. Your orator says that all of said taxes for said years, as set forth in the complainant's bill, are and have been for a long time due and delinquent; that the same have not been paid nor any part thereof, nor has said company or any person ever offered to pay the same or any part thereof; and your orator submits, under the advice of counsel, that the same, with the interest and penalties thereon, as provided by law, are legal and regular in all respects, and are valid and subsisting liens upon all of the lands aforesaid, and the said defendant, The Burlington and Missouri River Railroad Company in Nebraska, is in law bound to pay and satisfy the same and ought in equity and good conscience so to do; that said lands have received the benefits of the State and county government and ought in law and equity to contribute their just proportion of taxes for the support of the same.

13th. Your orator further shows that in each of said years from 1873 to 1877, inclusive, the said board of county commissioners, at the time and place required by law, duly held a session as a board of equalization for the purpose of correcting all errors, both in the listing and assessment of personal property and real estate and in the valuation of the same, and for the purpose of equalizing the assessment-rolls in their county. Of the sitting of said board for each of said years due and legal notice was given, as required by law, and of the session of said board in each of said years the said railroad company had due and legal notice; and your orator submits, under the advice of counsel, that it was the duty of said company and of all persons interested in said lands to appear before said board of equalization in each year and make complaint as to any errors and irregularities in the assessment and valuation of property and of any unlawful assessment thereof; that said
9 company in each of said years failed, neglected, and refused to appear before said board and question the assessment or valuation of said lands, except that for the years 1875, 1876, and 1877 said company caused to be filed with said board of equalization an affidavit for each of said years, complaining that the valuation placed upon said lands was too high; that said commissioners refused to allow the claim of said company and decided in each of said years upon said application that said assessments were not excessive; to which decision of said board said company never took exceptions or took action to reverse the same.

And your orator submits that said company and all other persons are now estopped from contesting in any way the legality or regularity of said assessment.

14th. Your orator further shows that in January, 1878, the then county commissioners of said Boone county and the county clerk

thereof left said county of Boone and went to the city of Lincoln, in the county of Lancaster, Nebraska; that, as your orator is informed and believes and it charges the fact to be, they went at the special instance and request of said railroad company; that at said city of Lincoln, on the 30th day of January, 1878, the then county commissioners, pretending at said time and place to act as the board of commissioners for said Boone county, met with certain agents, attorneys, and officers of the said railroad company and with one Adam Smith, at that time a citizen of Chicago, in the State of Illinois, and your orator is informed and verily believes, and so charges the fact to be, that said parties at said time and place so met together and confederating together for the purpose of defrauding the said county of Boone, undertook fraudently and without any authority of law whatever to enter into a certain pretended stipulation or agreement, and said commissioners did sign and deliver to said company a pretended stipulation or agreement or mem-
10 orandum thereof, a copy of which is hereto attached, marked Exhibit "G;" that there was no consideration for said pretended agreement; that said commissioners at said time and place acted as individuals and not as a board of county commissioners, and your orator submits, under the advice of counsel, that said pretended action was and is of no binding or valid effect whatever.

15th. Your orator further says that the pretended consideration for said pretended action and for the signing and delivering of said pretended agreement was the executing at said time and place of certain documents, of which copies are hereto attached, marked respectively Exhibit "H" and "J," the precise name or nature in law of which documents your orator, under the advice of counsel, professes itself unable to state, but submits the same to the consideration of the court; but your orator says there is no warrant in law for the execution of any such documents; that said commissioners had no authority to accept the same or to become parties thereto, and the same conferred no benefits or rights upon said county whatever.

16th. Your orator further shows that at said time and place the said commissioners, pretending to act for said county and as officers thereof, and, as your orator is informed and believes and so charges the fact to be, intending to injure and defraud your orator, the said County of Boone, out of the taxes legally and justly due it from said railroad company, signed a writing purporting to be an employment of M. H. Session as attorney for said county, and pretending to authorize him to appear in court and act for it concerning any litigation brought against said county concerning the legality of said taxes, a copy of which said pretended employment is hereto attached, marked Exhibit "L;" but your orator submits to the court, under the advice of counsel, that said commissioners acted
11 as individuals and not as officers of said county; that they had no authority in law to execute said paper for said county or to confer upon said attorney the power and authority therein pretended to be bestowed upon him by said county, and that no au-

thority was in fact conferred upon said attorney to act for said county in any way whatever.

17th. Your orator further shows that he is informed and believes and so charges the fact to be, that to induce said commissioners to enter into the fraudulent arrangement aforesaid the said railroad company and said Smith agreed to pay and did pay all the expenses of said commissioners from Boone county to said city of Lincoln and return and all their expenses at said city.

That said company and said Smith fraudulently induced said commissioners to pretend to employ M. H. Sessions as attorney for said county on an agreement that said company and said Smith would pay for his services and that said county or said commissioners need not so do; that said Sessions was so employed by said railroad company and by said Smith as an attorney to act for them and in their interest and against the interest of said county while pretending to act as the attorney thereof, and that his fees and expenses for so doing were agreed by said company and said Smith to be paid by them, and that in all that said Sessions had done pretending to act as attorney and counsel for said county and for the interest thereof he has, as your orator is informed and believes, acted for said company and in its interest, in pursuance of said fraudulent and illegal arrangement made between said commissioners and said Smith as aforesaid.

18. Your orator further says that of the fraudulent arrangements aforesaid the said H. H. Hunnewell had full knowledge and was, by his attorney, a party thereto; that in pursuance of said
12 fraudulent arrangements the said cause was commenced in a collusive, clandestine, and fraudulent manner; that said Sessions brought the said bill to Omaha, together with the stipulation and a decree, all prepared for entry, and filed the same in this court, paying the fees therefor on behalf of said railroad company and said Hunnewell, and endeavored to have said decree entered the same day the bill was filed for the purpose of preventing any knowledge thereof to come to the ears of any tax-payer of said county until after said decree had been entered.

Your orator says he is informed and believes and charges the fact to be that said Sessions was acting and did act in said cause under a retainer from said railroad company and said Hunnewell or from said Smith and not from said county; that he had no authority whatever, in fact or in law, to sign said stipulation; that the same was signed and filed in fraud of the rights of said Boone county, and your orator submits, under advice of counsel, that the same is and was of no effect or force whatever, and that the decree of this court, entered in pursuance thereof, was so procured by fraud and collusion and is null and void and should be vacated; that the same was a fraud upon this honorable court and greatly prejudicial to your orator, The County of Boone, and the tax-payers thereof.

19. Your orator further shows that said county of Boone now has an outstanding indebtedness of about $100,000.00; that the several school districts of said county also have a large outstanding indebtedness; that said amount of taxes set forth in complainant's

bill, with interest and penalties thereon, when collected and paid into the treasury of said county are in law applicable for the payment of the said indebtedness and would greatly aid said county in the payment of the same and greatly relieve the other tax-payers from the burdens thereof; that all other tax-payers of said county have during said years paid into — treasury of said county
13 the taxes levied against their personal property and real estate and the same has been applied to pay the expenses of the county government and to pay off the indebtedness thereof, and if the said decree so fraudulenty obtained is allowed by this honorable court to stand and remain in force, then the lands of all other tax-payers in said county will be holden for the payment and satisfaction of said indebtedness and will have to pay large and unjust taxes for the payment of the same; that there is no way to pay off and discharge said indebtedness except by the levying and collecting taxes each year upon and from the lands and other property in said county.

20. Your orator further shows that the indebtedness of said county in March, 1878, when said decree was entered, was about $70,000.00; that the several school districts in said county were largely indebted at said time, and your orator says that the indebtedness of said county and said school districts at said time was contracted during said years from 1873 to 1877, inclusive, and before the entering of said decree and while the legality of said taxes were unquestioned and with the belief that said lands and said railroad company should pay its due proportion of the taxes to discharge the same and bear its equal proportion of the expenses of said county government; that it is unjust and inequitable that the other tax-payers of said county should be compelled to pay said indebtedness and that the lands of said railroad company should be discharged therefrom; that any arrangement to that effect, such as has been attempted by the fraud of said several respondents and the then board of county commissioners, would greatly wrong said county and the tax-payers thereof; that thereby the lands in said county would greatly depreciate in value, greatly to the injury of said county and the inhabitants thereof.

14 21. Your orator further shows that if said decree is permitted to stand as the judgment of the court, although so obtained by the collusion and fraudulent confederating together of the said several respondents and the then board of county commissioners, as well as of the said Adam Smith, who pretended to have some interest in said taxes and in said decree, the exact nature of which is to your orator unknown, your orator, the said County of Boone, is without remedy unless permitted to maintain this its bill to set aside the same

22. Your orator further shows that the matters in dispute herein is more than $500.00, exclusive of costs.

23. Your orator represents that Horatio H. Hunnewell, who was complainant in said bill, is or was a stockholder of said railroad company, and as such filed said bill for relief, but your orator, upon information and belief, alleges and avers that said railroad company

was the real party complainant in said case, and fraudulently conspiring together with the said then board of county commissioners and with said Sessions, caused the said bill to be brought in the name of said Hunnewell for the sole and only purpose of obtaining jurisdiction for said bill in this court, all of the other parties thereto being citizens of the State of Nebraska.

24. Your orator further refers to the proceedings and records of this court in said case mentioned above to more fully show—reference thereto being had—the nature of said proceedings, the facts alleged in the bill filed therein, and the various allegations concerning the same, as herein named.

Wherefore and in consideration whereof and forasmuch as your orator, The County of Boone, is remediless in the premises at and by the strict rules of common law, and is relievable only in a court of equity, where matters of this nature are cognizable and relievable, to the end, there*of*, that your orator, The County of Boone, may have that relief which they can only obtain in a court of equity,
15 and that the defendants may answer the premises, but not upon oath or affirmation, the benefits whereof are expressly waived by the complainant, and that the said decree declaring the said taxes illegal and void and perpetually enjoining and restraining the collection of them and all of them may, for the reasons and under the circumstances aforesaid, be set aside by this honorable court and declared to be fraudulent and void, and that said taxes and all of them may be examined by the court and declared valid and regular and subsisting liens upon the real estate described herein, and that if the court shall find any of said taxes illegal and void the defendant, The Burlington and Missouri River Railroad Company in Nebraska, may, by the decree of the court, be ordered to pay into court for the use and benefit of said Boone county such amount of taxes, with legal interest and penalties thereon, as may by the court be found to be valid and legal, as a condition precedent to the granting of any relief in favor of said Hunnewell as against the lien or collection of said taxes, and for such other or further relief as the nature of this case may require and to your honors seems meet—

May it please your honors to grant unto your orator a writ of subpœna to be directed to the said Horatio H. Hunnewell, the Burlington & Missouri River Railroad Company in Nebraska, thereby commanding them and each of them, at a certain time and under certain penalties therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to your honors shall seem agreeable to equity and good conscience; and your orator will ever pray.

J. S. MILLER,
Solicitor for Complainant.

J. C. COWIN, *Of Counsel.*

16 UNITED STATES OF AMERICA, } ss:
District of Nebraska, Boone County, }

Peter J. Files, being duly sworn, says he is one of the county commissioners of Boone county, State of Nebraska, duly elected, qualified, and acting as such; that he has heard read the foregoing bill and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are stated to be on his information and belief, and as to those matters he believes them to be true.

PETER J. FILES.

Subscribed in my presence and sworn to before me, at Albion, in said county of Boone, this 16th day of June, A. D. 1883.

[SEAL.] GEO. M. MONTGOMERY,
Notary Public.

Attached to said bill are exhibits in words and figures following, to wit:

EXHIBIT "A."

In Equity.

To the honorable judges of the United States circuit court for the district of Nebraska:

Horatio H. Hunnewell, of the city of Boston, in the State of Massachusetts, brings this bill, as well on his own behalf as on behalf of all others similarly situated, against The Burlington and Missouri River Railroad Company in Nebraska, The Board of County Commissioners of Boone County, and S. P. Bollman, treasurer of said county; and thereupon your orator complains and says:

The said railroad company is and for six years and more last past has been a corporation organized under the laws of Nebraska, with full power to build the railroad hereinafter mentioned.

By the act of Congress approved on the 1st day of July, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific, and to secure to
17 the Government the use of the same for postal, military, and other purposes," the Union Pacific Railroad Company was authorized to build a railroad from the 100th meridian west to California, and also another road from the Missouri river to said one hundredth meridian, at which said 100th meridian said two roads were to form a junction, and to aid the said work every odd-numbered section of land not otherwise disposed of, to the amount of five alternate sections per mile of said road and within the limits of ten miles thereof, was granted to said company.

By an act amendatory thereof, passed on the 20th day of July, 1864, the Burlington and Missouri River Railroad Company was authorized to extend its road in Iowa from the point at which the same should strike the Missouri river, through the then Territory of Nebraska, to a point of junction with the said Union Pacific railroad

not further west than the said 100th meridian, and every alternate odd-numbered section of land not otherwise disposed of, to the amount of ten sections per mile on each side of said road on the line thereof, was granted to the said company, and said company, by proper proceedings in that behalf, in pursuance of the requirements of said act, secured the said patent, and afterwards, under and by authority of Congress, assigned the said grant and all its rights, privileges, and franchises to build said road to said defendant company. The said Union Pacific Railroad Company commenced the construction of its road from a point on the Missouri river in section 10, township 15, range 13, the same having been duly fixed in that behalf by the President of the United States, on or about the 1st day of January, 1864, and constructed the same to the 100th meridian by the first day of July, 1867, and secured *to*
acceptance thereof by the proper officers of the Government,
18 as in the act first above entitled required, and has performed such other acts and things as in the two several acts of Congress above mentioned required.

The said defendant railroad company, about the 4th day of July, 1869, commenced the construction of its road from a point in sec. 18, township 12, range 14, at which the said Iowa company's road struck the Missouri river, and continued the said work, so that on the 4th day of November, 1872, it completed the same for a distance of two hundred miles, to a point of junction on the said Union Pacific railroad.

On the 15th day of July, 1865, it established the line of its road and filed a map thereof with the Secretary of the Interior.

Afterwards the line of a part of said road was, for a short distance, changed by authority of Congress, but in nowise so as to affect the extent or limits of said grant; and the said work was duly accepted and approved by the proper officers of the Government, so that it became entitled to the lands so as aforesaid granted to it. The act above referred to, approved on the 2nd day of July, 1864, so far amended the act first above entitled as to enlarge the grant to the said Union Pacific Railroad Company from five to ten sections per mile on each side of its road and within the limits of twenty miles thereof for the reach of road extending west from the said 100th meridian. It so happened that the line of said Union Pacific Railroad Company's road from the Missouri river to the said 100th meridian and the line of said defendant's road were so near each other that a large part of the lands granted to said defendant company, being within twenty miles of its line and on the north thereof, was within the tract of land which was more than ten and less than twenty miles distant from said Union Pacific Railroad Company's road, and besides such lands in the said defendant company's grant there were also large bodies of land disposed of by Congress before the said grant took effect.

19 About the years 1867 and 1868 the question of the rights of the said railroad companies respect*fully* to the tracks of land — were then ten and less than twenty miles from the Union Pacific Railroad Company's line was agitated by them in the land

department of the Government, and by the officers thereof it was held and determined that the aforesaid amendment of the first above entitled act extended to the grant of the aforesaid Union Pacific Railroad Company made in aid of its road from the Missouri river to the said meridian (100th), so that said company was entitled, in preference to said defendant railroad company, to all lands, which were every alternate odd-numbered section on each side of said road within the limits of twenty miles, and in pursuance of such determination the said officers set off to and issued certificates for all such lands, being all the lands undisposed of and in the odd-numbered sections, which were within the limits of twenty miles on the north and on the south of said Union Pacific Railroad Company's line; and so it happened that the lands undisposed of and not so awarded to the said Union Pacific Railroad Company which were within twenty miles of said defendant company's line were insufficient to answer the grant to it to the amount of ten alternate sections per mile on each side of its road, and such deficiency amounted to one million two hundred thousand acres of land. In consequence of the said deficiency, and upon certain days in the year 1872, the officers of the land department of the Government set off to the said defendant company undisposed of lands of the Government to the amount of about one million two hundred thousand acres to supply the said deficiency, a part of which lands — north of the line north of said Union Pacific Railroad Company's road, and during said year patents were issued therefor to said defendant company. A part of said lands are within said county of Boone, and are particularly described in Schedule "A," attached to the original bill of your orator.

Your orator further represents that there was no assessment of the said real estate of said railroad company for the year A. D. 1873; that the persons who pretended to act as assessors in the various precincts of said county did not go upon the said real estate to assess the same or ascertain the value of any tracts thereof, but followed the instructions of the board of county commissioners of said county made by said board on the 31st day of January, A. D. 1873, at a meeting of said board then held, which said instructions to said assessors were in substance as follows: "The tax-list was then taken up and the assessors directed to conform to the following rates: Prairie lands from $3.00 to $4.00 per acre; timber land from $10.00 to $15.00 per acre." * * *

That there was no assessment of any property made by any of the said assessors for said year, but that the said assessors did attempt to follow the instructions of the said county commissioners; but your orator avers the truth to be said assessors never made any assessment at all for said years, nor did any of them make or attach to their assessment-rolls or assessment lists the oath and certificate required by section 12 of chapter 66 of the General Laws of Nebraska; nor did either of the said assessors ever take and subscribe an oath such as is certified to by the officer administering it, as is required by said section of said chapter.

That in fact the said assessors never made any assessment what-

ever of the said lands of the said railroad for said year 1873, yet the clerk of said county did pretend that an assessment had been made of said lands, and did make out a list and did charge the taxes which the county commissioners of said county pretended to
21 levy against said lands of said railroad company — the amount in said county altogether of the sum of fifteen thousand six hundred sixty-three and $\frac{3}{100}$ ($15,663.03) dollars. Your orator further avers that the county commissioners did pretend to make the following levy:

"By virtue of the requirements of the law the board proceeded to levy the taxes for the year 1873: State general fund, 2½ mills; sinking fund, 1 mill; State school fund, 2 mills; State university fund, ¼ mill; penitentiary, ½ mill." County tax levied by the commissioners as follows: "County general fund, 6 mills; county sinking fund, 21½ mills; county land road tax, 4.00 per quarter section; county special bridge tax, 2½ mills."

That of said levy there is charged against the property or lands of said railroad company by the clerk of said county of Boone taxes to the amount of fifteen thousand six hundred sixty-three and $\frac{3}{100}$ ($15,663.03). Your orator submits, under advice of counsel, that said assessment as made or pretended to be made, as above set forth, is void and no assessment, and that said county commissioners had no power or jurisdiction to make the said levy, and that said taxes are null and of no effect.

Your orator further represents that there was no assessment of the said real estate of said railroad company for the year 1874, as is required by law; that the persons who pretended to act as assessors in the various precincts of said county did not go upon the said real estate to assess the same nor ascertain the value of any of the tracts thereof, but followed the instructions of the board of county commissioners of said county made by said board on the 2nd day of February, 1874, at a meeting of said board then held; which said instructions to said assessors were in substance as follows:
22 "The tax-list was then taken up and the assessors directed to conform to the following rate: 'Prairie lands assessed at from 1.25 to $4.00 per acre; horses, mules, asses, &c.'" * * *

That the said assessors did attempt to follow the instructions of the said county commissioners; but your orator avers the truth to be said assessors never made any assessment at all for said year, nor did any of them attach to their assessment-rolls or assessment lists the oath and certificate required by section 12 of chapter 66 of the General Laws of Nebraska, nor did either of said assessors ever take and subscribe an oath such as is certified to by the officer administering it, as is required by said section of said chapter.

That in fact the said assessors never made any assessment whatever of the said lands of the said railroad company for the said year 1874, yet the clerk of said county of Boone did pretend that an assessment had been made of said lands and did make out a list and did charge the taxes which the county commissioners of said county pretended to levy against said lands of said railroad company. The amount in said county altogether is the sum of eleven thousand nine

hundred fifty-eight and $\frac{5}{100}$ ($11,958.05) dollars. Your orator further avers that the county commissioners did pretend to make the following levy: * * * "The tax levy of 1874 was placed on county general fund, 6 mills on the dollar; the sinking fund, 2½ mills on the dollar; the land road fund, $4.00 per quarter section, for State purposes, according to the statute rate."

That — said levy there is charged against the property or lands of said railroad company by the clerk of said county of Boone, taxes to the amount of eleven thousand nine hundred and fifty-eight and $\frac{5}{100}$ ($11,958.05) dollars. Your orator submits, under advice
23 of counsel, that said assessment as made or pretended to be made, as above set forth, is void and no assessment, and that the said county commissioners had no power or jurisdiction to make the said levy, and that said taxes are null and of no effect. Your orator further represents that there was no assessment of the said lands of the said railroad company for the year A. D. 1875; that the persons who pretended to act as assessors in the various precincts of said county did not go upon the said real estate to assess the same or ascertain the value of any of the tracts thereof, but followed the instructions of the board of county commissioners of said county of Boone, made by said board on the — day ——, 1875, at a meeting then held, which said instructions were in substance as follows:

This is blank.

That no assessment of any property was made by any of said assessors for said year, but that the said assessors did attempt to follow the instructions of the said county commissioners; but your orator avers the truth to be said assessors never made any assessment at all for said year, nor did any of them attach to their assessment-rolls or assessment lists the oath and certificate required by section 12 of chapter 66 of the General Laws of Nebraska, nor did either of them ever take and subscribe an oath such as is certified to by the officer administering, it as is required by said section of said chapter; that, in fact, the said assessors never made any assessment whatever of the said lands of the said railroad company for the year 1875, yet the clerk of said county of Boone did pretend that an assessment had been made of said lands and did make out a list and did charge the taxes which the county commissioners of said county pretended to levy against the lands of the said railroad company the sum altogether of ten thousand four hundred seventeen & $\frac{57}{100}$ ($10,417.57) dollars.

24 Your orator further avers that the county commissioners did pretend to make the following levy:

"The following levy was made for the year 1875:"

State Tax.

State general	fund, 4	mills on the dollar				1,433 74
" sinking	" 1	"	"	"		358 43
" school	" 1	"	"	"		358 43
" university	" ¼	"	"	"		89 61
" penitentiary	" 1	"	"	"		358 43
" relief	" $\frac{1}{10}$	"	"	"		45 84

County Tax.

County general fund,	6	mills	on	the	dollar	2,150	60
Special bridge "	10	"	"	"	"	3,584	34
Land road "	6	"	"	"	"	2,150	60

School-District Tax.

School district No.	1,	12	mills	on	the dollar.
" " "	6,	6	"	"	"
" " "	8,	6½	"	"	"
" " "	17,	35	"	"	"
" " "	10,	45	"	"	"
" " "	5,	10	"	"	"

* * * * * * *

That of said levy there is charged against the property or lands of said railroad company by the clerk of said county of Boone taxes to the amount of ten thousand four hundred and seventeen & $\frac{57}{100}$ dollars.

Your orator submits, under advice of counsel, that said assessment as made or pretended to be made, as above set forth, is void and no assessment, and that the said county commissioners had no power or jurisdiction to make the said levy, and that said taxes are null and of no effect.

Your orator further submits that the following levy of taxes is void and without any authority of law, to wit: Special
25 bridge, 10 mills on the dollar; that the board of county commissioners had no authority to make said levy of taxes; that said taxes so levied are void; that against the property of said railroad in said county there are of taxes so charged against the lands of said railroad company the sum of fourteen hundred fifty-one and $\frac{49}{100}$ ($1,451.49) dollars. Your orator further avers that the following tax, levied as above set forth, to wit, land road tax, 6 mills on the dollar, was levied without any authority of law and is void and no tax at all; that against the property of said railroad company there is charged the sum of seventeen hundred forty and $\frac{51}{100}$ ($1,740.51) dollars by virtue of said illegal levy.

Your orator further avers that the said pretended levy of said board of county commissioners for the county of Boone for the payment of interest and principal of school bonds, as above set forth, was made without authority of law whatever and is void as a levy of taxes, yet there is charged against the land of the said railroad company in said county, of said taxes so pretended to be levied by said board, the sum of nine hundred fifty-eight and $\frac{23}{100}$ ($958.23); that said taxes so levied are void.

Your orator submits, under advice of counsel, that the taxes charged by virtue of said illegal levies against the property of said railroad company in said county are imposed without authority of law and are void and of no effect.

Your orator represents that there was no assessment of the said lands of the said railroad company for the year A. D. 1876; that the

persons who pretended to act as assessors in the various precincts of said county did not go upon the said real estate to assess the same or ascertain the value of any of the tracts thereof, but followed the instructions of the board of county commissioners of said
26 county of Boone made by said board on the — day of ——, at a meeting of said board then held, which said instructions were in substance as follows: That no assessment of any property was made by any of said assessors for said year, but that said assessors did attempt to follow the instructions of the said county commissioners; but your orator avers the truth to be said assessors never made any assessments at all for said year, nor did any of them attach to their assessment-rolls or assessment lists the oath and certificate required by sec. 12 of chapter 66 of the General Laws of Nebraska, nor did either of them ever take and subscribe an oath such as is certified to by the officers administering it, as is required by said section of said chapter; that in fact said assessors never made any assessment whatever of the said lands of the said railroad company for the year 1876, yet the clerk of said county of Boone did pretend that an assessment had been made of said lands and did make out a list and discharge the taxes which the county commissioners of said county did pretend to levy against the lands of said railroad company, the sum altogether of fifteen thousand six hundred twenty-eight and $\frac{53}{100}$ ($15,628.53) dollars. Your orator further avers that the county commissioners did pretend to make the following levy:

"The levy of State taxes was made to conform to the report of the State auditor's assessed valuation of the county, $370,955.37.

State general fund, 4 mills on the dollar	1,483 82
State sinking fund, 1 mill on the dollar	370 95
State school " 1 " " " "	370 95
State university fund, $\frac{1}{4}$ " " " "	92 74
State penitentiary, 1 " " " "	370 95
State bonds fund, $\frac{1}{10}$ " " " "	

County Tax.

State general fund, 6 mills on the dollar	2,225 73
State special bridge, 4 " " " "	1,283 82
State land road 5 " " " "	1,511 12
State sinking for Co. bonds, 16½	6,120 75

27 *School-Dist. Bond Tax.*

School dist. No. 1, 15 mills on the dollar	420 00
School dist. No. 5, 7 mills " "	68 14
School dist. No. 6, 6 mills on the dollar	165 59
" " " 7, 12 " "	167 32
" " " 8, 7 " "	247 62
" " " 10, 25 " "	355 42
" " " 12, 5 " "	49 20
" " " 14, 3 " "	45 47
" " " 17, 45 " "	319 77
" " " 22, 7 " "	79 00

School Tax as Returned by School Boards.

Dist. No. 1,	10 mills.	Dist. No. 2,	20 mills.
Dist. No. 3,	8 mills.	Dist. No. 4,	14 mills.
Dist. No. 5,	14 mills.	Dist. No. 6,	13 mills.
" " 7,	13 "	Dist. " 8,	18 mills.
" " 9,	20 "	" " 10,	$5\frac{1}{2}$ "
" " 11,	$22\frac{1}{2}$ "	" " 12,	15 "
" " 13,	14 "	" " 14,	15 "
" " 15,	23 "	" " 16,	13 "
" " 17,	— "	" " 18,	10 "
" " 19,	4 "	" " 20,	5 "
" " 21,	25 "	" " 22,	12 "

That of said levy there is charged against the property or lands of the said railroad company by the clerk of said county of Boone taxes to the amount of fifteen thousand six hundred twenty-eight and $\frac{53}{100}$ ($15,628.53) dollars. Your orator submits, under advice of counsel, that said assessment as made or pretended to be made, as above set forth, is void and no assessment, and that said county commissioners had no power or jurisdiction to make the said levy, and that said taxes are null and of no effect. Your orator further avers that the following tax, levied as above set forth, to wit, land road, 5 mills on the dollar, was levied without any authority of law, and is void and is no tax at all; that against the property of said railroad company there is charged the sum of fourteen hundred and fifty dollars by virtue of said illegal levy.

Your orator further avers that the said pretended levy of
28 said board of county commissioners for the county of Boone for the payment of interest and principal of school bonds, as above set forth, was made without any authority of law whatever and is void as a levy of taxes, yet there is charged against the land of the railroad company of said taxes so pretended to be levied by said board the sum of eleven hundred seventy-nine and $\frac{25}{100}$ dollars.

Your orator submits, under advice of counsel, that the taxes charged by virtue of said illegal levies against the property of said railroad company in said county are imposed without authority of law, *is* excessive, and void and of no effect.

Your orator further represents that there was no assessment of the said real estate of said railroad company for the year A. D. 1877; that the persons who pretended to act as assessors in the various precincts of said county did not go upon the said real estate to assess the same or ascertain the value of any of the tracts thereof; but your orator avers the truth to be said assessors never made any assessment at all for said year, nor did any of them attach to their assessment-rolls or assessment lists the oath and certificate required by sec. 12 of chapter 66, of the General Laws of Nebraska nor did either of said assessors ever take and subscribe an oath such as is certified to by the officer administering it, as required by said section of said chapter; that, as a fact, the said assessors never made any assessment whatever of the said lands of the said railroad company for the year 1877, yet the clerk of said county did pretend

that an assessment had been made of said lands and did make a list and did charge the taxes which the county commissioners of said county pretended to levy against said lands of said railroad company, the amount altogether in said county of the sum of — dollars.

29 Your orator further avers that the county commissioners did pretend to make the following levy, to wit: County general, 10 mills on the dollar; county sinking fund, 9 mills on the dollar; county bridge, 5 mills on the dollar. Ordered that all taxes levied by State officers and by the various officers of school districts be, and the same are hereby, levied against the taxable property in said county; that of said levy there is charged against the property of said railroad company in said county taxes to the amount of over fifteen thousand dollars.

Your orator submits, under advice of counsel, that the taxes charged by virtue of said illegal levy are all imposed without authority of law and are all null and void.

The said defendant, Treasurer of Boone County, has advertised said lands for sale for the taxes of said years, with costs, penalty, interest, &c. (except 1877), and threatens to proceed to sell the same in pursuance of the authority vested in him as such treasurer, and unless restrained by the order and injunction of this court will proceed to do so, and will give the purchasers of said lands of said defendant company certificates in the form in that behalf prescribed by law, whereby a cloud will be cast upon said company's title and it subjected to many suits in respect thereof and to expenses to exceed the value of said property. Your orator is and has been for four years and more last past the owner and holder of twenty-three hundred and sixteen (2,316) shares of the stock of said company. On the 5th day of August he requested the board of directors of said company to take efficient measures to protect it from illegal exactions of the taxes claimed by said board of county commissioners and said treasurer, which request the said board refused and the said company, by its proper officers, before the filing of the original bill herein, proposed and was about to pay the said illegal taxes. He and all the stockholders of said company, who num-

30 bered over one thousand persons, are citizens of the United States other than Nebraska and the defendants are citizens of the State of Nebraska. Wherefore your orator prays that the said defendants may answer this *his* bill, but not under oath, which is hereby waived, and that it be by the decree of your honors declared that all the taxes levied by said board upon the lands of said defendant company are illegal, null, and void; that the said treasurer be restrained by the order and injunction of your honors from in any manner enforcing taxes or any thereof and from selling the said lands or any thereof for said taxes, and that said company be in like manner restrained from paying the same, and that the said treasurer and board be decreed to cancel said taxes and the record thereof upon the books and records of said county and to pay the costs of this suit, and that your orator and all other stockholders as aforesaid may have all such other and further relief as the circum-

stances of this case require and is agreeable to equity and good conscience.

May it please your honors to grant unto your orator not only the writ of injunction, issuing out of and under the seal of this honorable court, directed to the said defendants, The Burlington and Missouri River Railroad Company in Nebraska, The Board of County Commissioners of Boone County, and S. P. Bollman, its treasurer, restraining them as hereinbefore prayed, but also the writ of subpœna, issuing in like manner and directed to the said defendants, commanding them and each of them that at a certain day therein to be inserted they appear before your honors in this honorable court, then and there to answer this your orator's bill, and to stand to, abide, and perform such order and decree in the premises as to your honors may seem to be agreeable to equity and good conscience.

And your orator will ever pray, &c.

T. M. MARQUETTE,
Att'y for Pl'ff.

31 SCHEDULE "A." EXHIBIT A.

Part of Sec.	Sec.	T'n'p.	Ra.
All	10	18	5 W.
All	7	18	5 W.
All	1	19	5 "
E. ½	3	19	5 "
S. W. ¼	3	19	5
E. ½ N. W. ¼	3	19	5 "
E. ½	5	19	5
W. ½ S. W. ¼	7	19	5 "
W. ½	9	19	5
All	11	19	5 "
All	13	19	5 "
All	15	19	5
All	19	19	5 "
S. W. ¼	21	19	5
All	23	19	5
All	25	19	5
All	29	19	5
All	31	19	5
S. ½	33	19	5
N. E. ¼	35	19	5
E. ½ N. W. ¼	35	19	5 "
All	1	20	5
All	3	20	5 "
All	5	20	5 "
All	7	20	5
All	9	20	5
All	11	20	5
All	13	20	5 "
All	15	20	5
All	17	20	5
All	19	20	5
All	21	20	5
All	23	20	5 W.
All	25	20	5
All	27	20	5
All	1	22	5
All	3	22	5
All	5	22	5
All	7	22	5
All	9	22	5
All	11	22	5
All	13	22	5
All	15	22	5
All	17	22	5
All	19	22	5
All	21	22	5
All	23	22	5

Part of Sec.	Sec.	T'n'p.	Ra.
N. ½	29	20	5 W.
W. ½ S. E. ¼	29	20	5 W.
S. W. ¼	29	20	5 "
N. ½	31	20	5 "
N. ½ S. E. ¼	31	20	5 "
N. ½ S. W. ¼	31	20	5 "
E. ½	33	20	5
S. W. ¼	33	20	5 "
All	35	20	5 "
All	1	21	5 "
All	3	21	5
All	5	21	5
All	7	21	5
All	9	21	5 "
E. ½	11	21	5
E. ½ S. W. ¼	11	21	5
N. W. ¼ S. W. ¼	11	21	5
N. W. ¼	11	21	5
S. ½ S. W. ¼	13	21	5
N. ½ N. W. ½	13	21	5
N. ½ N. E. ¼	15	21	5
S. W. ¼ N. E. ¼	15	21	5
S. ½	15	21	5
N. W. ¼	15	21	5
All	17	21	5
All	19	21	5
All	21	21	5
All	23	21	5
All	25	21	5
All	27	21	5
All	29	21	5
All	31	21	5
All	33	21	5
All	35	21	5
All	8	19	6
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All	21	19	6
All	23	19	6
All	25	19	6
All	27	19	6

Schedule "A," Exhibit A—Continued.

Part of Sec.	Sec.	Tp.	R.W.	Acres.
All	25	22	5	
All	27	22	5	
All	29	22	5	
All	31	22	5	
All	33	22	5	
All	35	22	5	
All	1	18	6	
All	3	18	6	
All	5	18	6	
All	7	18	6	
All	9	18	6	
All	11	18	6	
All	13	18	6	
32 All	15	18	6	
All	17	18	6	
All	19	18	6	
All	21	18	6	
All	23	18	6	
Lot No. 1	29	18	6	8.19
Lot No. 2	29	18	6	6.24
N. ½ N. E. ¼	1	19	6	
S. E. ¼ N. E. ¼	1	19	6	
E. ½ S. E. ¼	1	19	6	
S. W. ¼ S. E. ¼	1	19	6	
S. ½ S. W. ¼	1	19	6	
S. W. ¼	27	20	6 W.	
All	29	20	6 "	
All	31	20	6	
All	33	20	6	
All	35	20	6	
All	1	21	6	
All	3	21	6	
All	5	21	6	
All	7	21	6	
All	9	21	6	
All	11	21	6	
All	13	21	6	
All	15	21	6	
All	17	21	6	
All	19	21	6	
All	21	21	6	
All	23	21	6	
All	25	21	6	
All	27	21	6	
All	29	21	6	
All	31	21	6	
All	33	21	6	
All	35	21	6	
All	1	22	6	
All	3	22	6	
All	5	22	6	
All	7	22	6	
All	9	22	6	
All	11	22	6	
All	13	22	6	
All	15	22	6	
All	17	22	6	
All	19	22	6	
All	21	22	6	
All	23	22	6	
All	25	19	7	
All	27	19	7	
All	29	19	7	
All	31	19	7	
All	33	19	7	
All	35	19	7	
E. ½ N. E. ¼	1	20	7	
All	3	20	7	
All	5	20	7	
All	7	20	7	
All	9	20	7	
All	11	20	7	
33 All	13	20	7	
All	15	20	7	
All	17	20	7	
All	19	20	7	
All	21	20	7	
All	23	20	7	
All	25	20	7	
All	27	20	7	
All	29	20	7	
All	31	20	7	

Part of Sec.	Sec.	Tp.	R.W.	Acres.
All	29	19	6	
All	31	19	6	
All	33	19	6	
All	35	19	6	
All	1	20	6	
All	3	20	6	
All	5	20	6	
All	9	20	6	
All	11	20	6	
All	13	20	6	
N. ½ N. E. ¼	15	20	6	
S. E. ¼ N. E. ¼	15	20	6	
N. E. ¼ S. E. ¼	15	20	6	
S. ½ S. E. ¼	19	20	6	
S. ½ S. W. ¼	19	20	6	
N. W. ¼ S. W. ¼	19	20	6	
W. ½ N. W. ¼	19	20	6	
N. W. ¼	21	20	6	
N. ½ N. E. ¼	23	20	6	
S. E. ¼ N. E. ¼	23	20	6	
N. E. ¼ S. E. ¼	23	20	6	
E. ½	25	20	6	
S. ½ S. W. ¼	25	20	6	
E ½ N. W. ¼	25	20	6	
All	25	22	6	
All	27	22	6	
All	29	22	6	
All	31	22	6	
All	33	22	6	
All	35	22	6	
All	1	18	7	
All	3	18	7	
All	5	18	7	
All	7	18	7	
All	9	18	7	
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All	21	21	7	
All	23	21	7	
All	25	21	7	
All	27	21	7	
All	29	21	7	
All	31	21	7	
All	33	21	7	
W. ½	35	21	7	
All	1	22	7	
All	3	22	7	
All	5	22	7	
All	7	22	7	
All	9	22	7	
All	11	22	7	
All	13	22	7	
All	15	22	7	
All	17	22	7	
All	19	22	7	
All	21	22	7	
All	23	22	7	
All	25	22	7	
All	27	22	7	
All	29	22	7	

Schedule "A," Exhibit A—Continued.

Part of Sec.	Sec.	T'p.	R.W.	Acres.
All	33	20	7	
All	35	20	7	
All	1	21	7	
All	3	21	7	
All	5	21	7	
All	7	21	7	
All	7	21	7	
N. ½	11	21	Sec.7	
E. ½ S. E. ¼	11	21	7	
E. ½ S. W. ¼	11	22	7	
All	13	21	Sec.7	
All	15	21	7	
All	17	21	7	
All	19	21	7	
All section. Lot No. 1	7	17	8 W.	23.23
All section. Lot No. 2	7	17	8	23.93
All section. Lot No. 3	7	17	8	24.57
All section. Lot No. 4	7	17	8	25.27
All section. W. ½ N. E. ¼	7	17	8	
All section. W. ½ S. E. ¼	7	17	8	
All section. W. ½	7	17	8	
All section. Lot No. 1	19	17	8	29.11
All section. Lot No. 2	19	17	8	29.31
All section. Lot No. 3	19	17	8	29.49
All section. Lot No. 4	19	17	8	29.69
All section. W. ½ N. E. ¼	19	17	8	
All section. W. ½ S. E. ¼	19	17	8	
All section. W. ½	19	17	8	
All section. Lot No. 1	31	17	8	
All section. Lot No. 2	31	17	8	
All section. Lot No. 3	31	17	8	
All section. Lot No. 4	31	17	8	
All section. W. ½ E. ½	31	17	8	
All section. W. ½	31	17	8	
All	1	18	8	
All	3	18	8	
All	5	18	8	
All	7	18	8	
All	9	18	8	
All	11	18	8	
All	13	18	8	
All	15	18	8	
All	17	18	8	
All	19	18	8	
All	21	18	8	
All	23	18	8	
All	25	18	8	
All	27	18	8	
34 All	29	18	8	
All	33	18	8	

Part of Sec.	Sec.	T'p.	R.W.	Acres.
All	31	22	7	
All	33	22	7	
All	35	22	7	
Lot No. 1 All section.	7	16	8	47.56
Lot No. 2 All section.	7	16	8	46.68
W. ½ All section.	7	16	8	
Lot No. 1	19	16	8	43.55
Lot No. 2	19	16	8	42.09
W. ½	19	16	8	
Lot No. 1	31	16	8	39.08
Lot No. 2	31	16	8	36.52
W. ½	31	16	8	
All	1	19	8 W.	
All	3	19	8 W.	
All	5	19	8 W.	
All	7	19	8 W.	
All	9	19	8 W.	
All	11	19	8	
All	13	19	8	
All	15	19	8	
All	17	19	8	
All	19	19	8	
All	21	19	8	
All	23	19	8	
All	25	19	8	
All	27	19	8	
All	29	19	8	
All	31	19	8	
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All	35	19	8	
All	1	20	8	
All	3	20	8	
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All	27	20	8	
All	29	20	8	
All	31	20	8	
All	33	20	8	
All	35	20	8	
All	31	18	8	
All	35	18	8	

DISTRICT OF NEBRASKA:

On this 4th day of March, A. D. 1878, before me personally appeared A. F. Touzalin, to me known to be the identical person who subscribed the foregoing bill, and, being by me duly sworn, said that the plaintiff therein is a non-resident of said district and was absent therefrom; that the said deponent was his agent and by him duly authorized to bring this bill; that he had read the same and knew the contents thereof, and the same was true of his own knowledge except as to the matters stated on information and belief of said deponent, and as to them he believes it to be true.

A. E. TOUZALIN,
Agent for H. H. Hunnewell.

Subscribed in my presence and sworn to before me this 4th day of March, A. D. 1878.

[SEAL.]

GEO. B. HARRIS,
Notary Public.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court for the district of Nebraska, certify that I have compared the annexed copy of bill of complaint in case of Hunnewell *vs.* Board of Co. Commissioners Boone Co. *et al.* (21 O. D.) with the original on file in this office, and that the same is a correct transcript thereof and of the whole of said original.

In testimony whereof I have caused the seal of said court to be hereto affixed, at the city of Omaha, in said district, this 27th day of January, 1883.

[Seal of the Court.]

ELMER D. FRANK, *Clerk.*

35 EXHIBIT B.

At a session of the circuit court of the United States for the district of Nebraska continued and held, pursuant to adjournment, at the United States court-room, in the city of Omaha, on the eighth day of March, 1878, the Honorable Elmer S. Dundy, judge, being present and presiding in said court, the following, among other, proceedings were had and done, to wit:

H. HUNNEWELL
vs.
BOARD OF COUNTY COMMISSIONERS OF BOONE COUNTY *et al.*

And now comes as well the said plaintiff, by *its* attorney, as the said defendants, by their attorneys, and thereupon this action comes on for trial before the court upon the issues joined between the parties; on consideration whereof the court do find the issue in favor of the plaintiff, and do find that the taxes set forth in said petition of plaintiff are void, as in said petition the said plaintiff has alleged.

It is therefore ordered and adjudged that an injunction be, and the same is hereby, allowed as prayed for in said petition of plaintiff, and the same is hereby made perpetual; and that the said defendants, The County Commissioners and the Treasurer of said County, or their successors, are hereby perpetually enjoined from collecting or in any way attempting to collect or in any way intermeddling with the taxes set forth in said petition, and that the successors in office of the said defendants be, and the same are hereby, perpetually enjoined from collecting or in any way intermeddling with said taxes; and it is further considered that the said plaintiff recover against the said defendants its costs in and about this
36 suit in this behalf expended, taxed to be — dollars.

(Signed) ELMER S. DUNDY, *Judge.*

EXHIBIT "C."

Affidavit and Certificate to Assessor's Returns, A. D. 1876.

THE STATE OF NEBRASKA, } ss:
Boone County, }

I, Charles Chadwick, precinct assessor in and for Cedar precinct, in Boone county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full — thereof is set forth in the above returns, and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

CHARLES CHADWICK, *Assessor.*

Subscribed in my presence and sworn to before me this 11th day of April, A. D. 1876.

[SEAL.] JOHN PETERS,
County Clerk,
By LORAN CLARK, *Deputy.*

EXHIBIT "D."

Copy of Oath of Assessor, 1877, *to His Returns.*

THE STATE OF NEBRASKA, } ss:
Boone County, }

37 I, M. B. Boardman, precinct assessor in and for Manchester precinct, in Boone county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns, and that in no case have I knowingly omitted to demand of any person of whom I was required make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

MANLY B. BOARDMAN, *Assessor.*

Subscribed in my presence and sworn to before me this 7th day of April, A. D. 1877.

[Seal Boone Co.]

JOHN PETERS,
County Clerk.

EXHIBIT "G."

LINCOLN, NEB., *Jan. 30th*, 1878.

Memorandum of an agreement made by and between the Burlington and Missouri River Railroad Company in Nebraska, first party, and the County of Boone, Nebraska, by its commissioners, of the second part, and the Nebraska Land and Live Stock Company, of the third part.

Whereas parties of the first and third parts have this day entered into an agreement and bonds for the performance of certain obligations conditional on the absolute release by the second party of all illegal taxes levied upon the lands of the first and third parties in the county of Boone for the years 1873 and 1877, inclusive:

38 Now, therefore, the party of the second part hereby agrees, by its commissioners and by its authorized attorney, M. H. Sessions, to enter into the necessary stipulation and to have decree of court entered up in the circuit court of the United States for the district of Nebraska eradicating the whole of the taxes now charged against the lands of the first and third parties for the above years, all of said taxes having been examined and agreed upon as being illegal and void.

THOMAS T. WILKINSON, *Chair'n.*
EDWIN BROADBENT,
T. H. BOWMAN, *Com'rs.*
M. H. SESSIONS,
Attorney for Boone County.

Attest: JOHN PETERS,
County Clerk.

Lincoln, Neb., Jan. 30th, 1878.

Endorsed: Copy. Memorandum of an agreement between B. & M. R. R. Co., first part, Boone Co., by its comm'rs, second part, Neb. L. & L. S. Co., third part.

EXHIBIT "H."

LINCOLN, NEBRASKA, *Jan. 30th*, '78.

Know all men by these presents that a certain contract bearing date July 17th, 1877, having been made by the county of Boone, through its commissioners, and one Adam Smith, of Chicago, Illinois, wherein the second party agreed to make the purchase of certain lands of the Burlington and Missouri River Railroad Company in Nebraska, and to pay all legal tax thereon for the year 1878 and thereafter, and to make certain improvements in the county of

Boone; in consideration of which the county commissioners of said county agreed at some future day to take the necessary legal steps for the wiping out of all the illegal taxes claimed to be due upon the lands of the said Burlington and Missouri River Railroad Company in Nebraska for the years 1873, 1874, 1875, 1876, and 1877;

39 And whereas the second party has partly completed the improvements agreed upon and has entered into a bond for the completion of the same;

And whereas the second party is now prepared to enter into the necessary obligations for the payment promptly hereafter of the legal taxes;

And whereas the county commissioners have this day taken the necessary legal action for the wiping out of all the illegal taxes claimed to be due for the said years above mentioned;

And whereas the said Adam Smith has transferred his rights to the Nebraska Land and Live Stock Company, which said company assumed all duties and obligations of said Adam Smith:

Therefore it is hereby agreed, and the Nebraska Land and Live Stock Company bonds itself in the sum of ten thousand dollars ($10,000.00), to pay all legal taxes for the years 1878 to 1882, inclusive, which may be levied upon the lands purchased by the Nebraska Land and Live Stock Company from the said railroad company in the county of Boone, Neb., and the said Nebraska Land and Live Stock Company hereby binds itself, under the same penalty as above stated, to pay all tax which may be levied upon the lands of the Burlington and Missouri Railroad Company in Nebraska for the said years 1878 to 1882, inclusive, should said railroad company fail to pay the said taxes.

(Signed) NEBRASKA LAND AND LIVE STOCK CO.,
By ADAM SMITH, *President.*

EXHIBIT "L."

That whereas the taxes on the lands of the B. & M. R. R. Co. in Nebraska, in Boone county, both State and county and school taxes, are unpaid for the years 1873, 1874, 1875, 1876, and 1877; and whereas the said company dispute the legality of said taxes, and it is necessary to test their legality:

Therefore be it resolved that the board employ M. H. Ses-
40 sions as its attorney to defend any suit that may be brought against the county or to bring any suit he may deem best to test the legality of said taxes, and if he deem that any of said taxes are illegal he may make such compromise in the matter with the said company as he may deem best for the interest of the county in the premises; and the said M. H. Sessions is hereby authorized to enter an appearance for the county of Boone, Neb., in any suit which may be brought by the said Burlington and Missouri River railroad in Nebraska or by any stockholder thereof and to take action

as directed by said commissioners, and to waive issuance and service of a subpœna in the case.

THOMAS T. WILKINSON, *Chairman.*
EDWIN BROADBENT,
T. H. BOWMAN, *Com'rs.*

Attest: JOHN PETERS,
County Clerk.

Lincoln, Neb., Jan'y 30th, '78.

(Endorsed:) Contract of employment by Co. commissioners of Boone county of M. H. Sessions.

EXHIBIT "J."

The Burlington and Missouri River Railroad Company in Nebraska binds itself in the sum of ten thousand dollars ($10,000) to pay all legal taxes for the years 1878 to 1882, inclusive, upon all its lands in Boone county, Nebraska, which has not been absolutely sold and deeded to the Nebraska Land and Live Stock Company or to other parties.

(Signed) BURLINGTON & MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA.
A. E. TOUZALIN, *Land Commissioner.*

I, John R. Clark, of Lincoln, Nebraska, do hereby bind myself in the sum of ten thousand dollars ($10,000) for the performance by the Burlington and Missouri River Railroad Company in Ne-
41 braska of the above obligations as entered into by the said railroad company should said railroad company fail to carry out this obligation as therein stated.

(Signed) JOHN R. CLARKE.

Upon the back of said bill appear endorsements in words and figures following, to wit: No. 30, Doc. H. Circuit court of the United States, district of Nebraska. The County of Boone *vs.* The Burlington and Missouri River Railroad Company in Nebraska and Horatio H. Hunnewell. Bill. Filed June 9, 1883. Elmer D. Frank, clerk. J. S. Miller and J. C. Cowin, attorneys for complainant.

Thereupon, afterwards, to wit, on the 28th day of January, 1884, answer was filed in said case; which said answer is in words and figures following, to wit:

42 In the Circuit Court of the United States in and for the District of Nebraska.

COUNTY OF BOONE, Complainant,
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA and HORATIO H. HUNNEWELL, Respondents.

Answer.

Now come the defendants and admit that the Burlington and Missouri River Railroad Company is a corporation organized under and by virtue of the laws of the State of Nebraska, and that Horatio Hunnewell is a citizen of the State of Massachusetts, and that said Burlington and Missouri River Railroad Company in Nebraska during the years 1873, 1874, 1875, 1876, and 1877 was the owner of lands and real estate described in the list attached to complainant's bill and referred to in complainant's bill as Schedule "A," but denies that ever since the year 1872 and up to the present time all of said lands were and are legally subject to taxation for all legal purposes in the said county of Boone, Nebraska, and denies that no taxes of any kind nor interest or penalties thereon have ever been paid by said railroad company or by any other person upon said lands for any of said years, nor has any person ever offered to pay the same or any part thereof.

Denies that there have been duly and legally assessed and levied upon said lands by the proper authorities of Boone county, Nebraska, taxes for State, county, and school purposes for the following years in the following amounts, to wit:

For the year	1873	$15,663 00
" " "	1874	11,598 00
	1875	10,417 00
	1876	15,628 00
	1877	15,000 00

43 And denies that any of said taxes levied for said years were legal, except as hereinafter expressly admitted.

Admits that the said Horatio Hunnewell on the 4th day of March, 1873, filed his bill of complaint in this court against the other respondent in this court and the board of county commissioners of Boone county and S. P. Bollman, treasurer of said county of Boone, to compel the cancellation of said taxes so assessed and levied against said lands and to procure a decree of court holding and declaring the same to be illegal and void.

Admits that said Horatio Hunnewell filed his bill for the purpose of perpetually enjoining the collection of said taxes, but denies that said M. H. Sessions pretended to appear and file a stipulation consenting to the said bill being taken *pro confesso* and the entry of a decree in favor of said complainant for the relief granted, and states the facts to be that said M. H. Sessions only consented to said decree under the consideration and circumstances hereafter more fully stated.

Admits that the said bill was taken *pro confesso*, and that a decree in favor of complainant for the relief prayed, granting a perpetual injunction against the collection of said taxes and declaring the same illegal and void and relieving the said lands from the lien thereof, was entered in the United States circuit court, this court, on the 8th day of March, 1878, as is set forth in said complainant's bill.

Admits that a copy of the bill filed by the said Hunnewell is attached to complainant's bill and marked Exhibit "A," and that a copy of the decree is also attached to said bill of complainant and marked Exhibit "B."

That as to the fact *of* whether during the years 1873 and 1874 there were assessors duly elected and qualified in each
44 of the precincts of Boone county your respondents are not advised and have not sufficient knowledge upon the subject, and therefore deny the same.

Admits, as is set forth in said bill, that the *bond* of county commissioners for said years 1873 and 1874 did not only pretend to instruct but did instruct the said assessors as set forth in the bill of complaint filed by said Hunnewell, which is made a part of plaintiff's bill of complaint, but denies that said assessors in making their assessment for said years did not regard or follow said instructions and proceed in due form of law to assess and value all lands in said county for said years subject to taxation, and to ascertain the fair and true value of the same, and did return the same at the true assessable value; but, on the other hand, that said assessors did follow the instructions and were governed substantially by the instructions given them by the said county commissioners for said year.

Denies that the assessment and valuation made by them of the lands of said railroad company for said years was a fair and true value for taxable purposes and was the same as placed upon all other lands of a similar kind in said county.

That as to the fact alleged that all of said assessors for each of said years duly subscribed and took their oaths of office prescribed by law your respondents have not sufficient knowledge, but state upon information and belief that they did not take said oath; but denies the allegation in said bill of complaint that said assessors for said years, at the time required by law, duly made out their several assessment lists or rolls, including the assessment of said lands, and duly returned the same into the office of the county clerk and to said board of county commissioners.

They admit that there are now no oaths and certificates of said assessors attached to said assessment lists, as required by
45 section 12, chapter 66, of the General Laws of Nebraska, but deny that said assessors did take and subscribe said oaths and did attach the same to their lists in the manner provided by law, and deny that said oaths and certificates have been in some manner detached from said lists and mislaid, but state the facts to be that said assessors never took or subscribed any oaths or certificates and never attached the same to their lists or assessment-rolls for the

said years 1873 and 1874, and required by section 12, chapter 66, of the General Laws of Nebraska.

Deny that for said years there were duly levied taxes upon the lands of said company, as aforesaid, duly assessed in about the amounts set forth in complainant's bill.

As to the fact of the instructions for the years 1875, 1876, and 1877, set forth in plaintiff's bill of complaint, plaintiff admits that for the year 1875 the instruction as set forth was given to said assessors, but is not informed as to whether the instructions for the years 1876 and 1877 were given as alleged in the bill of complaint.

The respondents further deny that the assessors for Boone county did in each of said years 1875, 1876, and 1877 proceed to assess and value all the personal property and real estate in their several precincts in the said county of Boone, including the said lands of the said railroad company, at its true and fair value for purposes of taxation; and deny that in so doing they did not follow any instructions of the board of county commissioners, but that they proceeded lawfully to ascertain the true and fair value of said property, and deny that they so valued and assessed it at its fair value.

They deny that the said lands of the said railroad company for the said years were valued and assessed at a fair and true valuation.

They further deny that each of said assessors for each of
46 the said *assessors for each of the said* years in said county, at the time required by law, duly made and returned to the office of the county clerk of said county and to the county commissioners thereof a duly prepared assessment of all the property of said precinct subject to taxation, together with a fair and true valuation of the same.

Denies that each of the assessors for each of the said years duly subscribed and attached to his assessment list an affidavit and certificate such as are required by section 12, chapter 66, of the General Laws of Nebraska.

That whether the affidavits or copies marked Exhibits "C," "D," and "E" are substantially correct respondents have not sufficient knowledge, and therefore deny the same.

Denies that said assessments for said years were regular and valid in all respects, and that the same were duly equalized and the taxes duly and legally levied thereon in about the amount set forth in plaintiff's bill.

Respondents admit that for the year 1875 the officers of the county of Boone levied or pretended to levy a tax of ten mills on the dollar valuation as a special bridge tax, and that said pretended tax amounted to the sum of $1,451.49 upon said lands, and also a levy of six mills on the dollar valuation for road purposes.

They further admit that said county officers, the county commissioners of said county, also pretended to levy for said year in the several school districts in said county taxes for the payment of interest and principal of school bonds in the several school districts, which amounted to $958.23 on the said lands, and that said taxes were all that were pretended to be levied for said year; but re-

spondents further allege that said county commissioners for said county for the year 1875 had no authority of law to levy 10
47 mills for bridge purposes or to levy six mills on the dollar valuation for land road purposes, and that they had no authority to levy the amount they did levy upon the school districts for school bonds; that there was no law for the same.

Your respondents further deny that for the year 1876 there was also duly assessed and levied land road tax of 5 mills on each dollar valuation, but admits that the county commissioners pretended to levy 5 mills on each dollar valuation for land road tax, but say that the same was levied without authority of law and was absolutely void, and that the said sum so pretended to be levied upon said lands amounted to the sum of $1,450.

They also admit that the county commissioners pretended to levy a tax on the several school districts for the payment of interest and principal of school bonds, but that said levy was made without any authority of law whatever, and that said pretended levy amounted to $1,129; but denies that they ever legally made a levy for the sinking fund of 16½ mills on the dollar valuation.

Denies that one-half of the special bridge tax levied for the year 1875, as above, was afterwards cancelled and remitted by said board of county commissioners.

Denies that said board of county commissioners had authority to make the levies as above set forth, and denies that the land road tax and the tax levied for the payment of interest and principal of school bonds, as set forth above for the years 1875 and 1876, are valid and legal taxes, and that the same were duly and regularly levied for said purposes; and denies that said board of county commissioners had power *of* or authority to levy the same or that
48 the same is a valid and subsisting lien against all of said real estate of respondents; denies that the tax levied for the year 1876 for county sinking fund and for county road were legally and regularly levied; denies that any of said taxes were legally and regularly levied.

Denies that said county had incurred a large bonded indebtedness, and denies that said taxes were not excessive; and denies that said county commissioners had jurisdiction and power to levy the same, and that they are a valid and subsisting lien against all of said property; and denies that all of said taxes, as set forth in complainant's bill, are and have been for any time due and delinquent, and that the same have not been paid nor any part thereof, and that no person has ever offered to pay the same or any part thereof; and denies that the same, with interest and penalties thereon, are legal and regular in all respects and are valid and subsisting liens upon all lands aforesaid of the said defendants, The Burlington and Missouri River Railroad Company in Nebraska, as alleged in said plaintiff's bill.

As to the fact of whether in each of the said years from 1873 to 1877 the board of county commissioners, at the time and place as required, duly held a session, as a board of equalization, for the purpose of correcting all errors, both in the listing and assessment

of all personal property and real estate and in the valuation of the same and for the purpose of equalizing the assessment-rolls of said county—of the sitting of said board for each of said years due and legal notice was given—these respondents have not sufficient knowledge to know, and therefore deny the same, and deny that the said railroad company had had a legal notice thereof; that said company admit that they did protest against the valuation as being too high for the years 1875, 1876, and 1877, and that said board would
49 not hear the said petition of the said railroad company or act upon the same.

These respondents admit that in January, 1878, the then county commissioners of Boone county and the county clerk of Boone county went to the city of Lincoln, in the county of Lancaster, Nebraska, but deny that they went there at the special request of the said respondents, the railroad company and Horatio Hunnewell.

Denies that at said city of Lincoln, on the 30th day of January, 1878, the then county commissioners pretended to act as the board of commissioners for said Boone county and met with certain agents and attorneys and officers of the said railroad company and with one Adam Smith, at that time a citizen of Chicago, State of Illinois; and denies that those parties referred to met and confederating together for the purpose of defrauding the said county of Boone, and undertook fraudulently and without any authority of law whatever to enter into a certain pretended stipulation or agreement, but admits that said commissioners did sign a stipulation or agreement or memorandum thereof, a copy of which is attached and marked Exhibit "G" to plaintiff's bill, but denies that there was no consideration for said pretended agreement, but your respondent supposed that they acted as individuals and not as commissioners.

Your respondents further deny that the only consideration for the said pretended action, for the signing and delivery of said agreement, was the executing at said time and place of certain documents of which copies are hereto attached and marked Exhibits "H" and "J," but alleges the truth to be that the questions as to whether the taxes levied by them for the years referred to were legal or what proportion of them were legal and what were illegal were talked over at the time referred to, at Lincoln, by complainants, by the said Adam Smith, who was the president of the Nebraska Land and
50 Live Stock Company, which said company had purchased and received a contract from the B. & M. prior to this for a large body of said lands for said company with one Touzalin, who was then land commissioner for the Burlington and Missouri River Railroad Company, but says that there was no confederation or no attempt to defraud the county, the county commissioners being anxious to know, as they were unable to collect the taxes out of the land, and admitted that a large proportion of them were illegal. The said county commissioners suggested to Mr. Touzalin that they would employ counsel to meet with the counsel of the stockholders or of the railroad company and see if some arrangement could not be arrived at by which the taxes known to be illegal might be got rid of, and to see if those that were legal would be paid.

That as the matter stood the said commissioners stated that they could not collect the taxes; no one would take the land for them, it being uncertain at that time whether the railroad company owned any of the land or not, and they said that they would appoint and duly authorize an attorney to go into court and litigate the matter or settle the matter as he thought best; and that in pursuance of said understanding the said board of county commissioners, about one month after the meeting referred to in plaintiff's bill as taking place at Lincoln, *they* did in public meeting ratify the appointment made by Mr. Sessions and authorized him to appear for them in any proceeding in any court or in the United States circuit court brought by either the railroad company or any stockholder; that this was the extent of the arrangement entered into by and between the respondents or either one of them and the county commissioners.

Respondents deny that in order to induce the commissioners to enter into the arrangement aforesaid the said railroad company agreed to pay and did pay all of the expenses of said com-
51 missioners from Boone county to said city of Lincoln and return and pay their expenses at said city of Lincoln.

Whether the said Smith, who made a contract for the Nebraska Land & Live Stock Company for some of the lands in question, agreed to pay and did pay the expenses of the said commissioners from Boone county to the said city of Lincoln and return and pay their expenses *to* said city, your respondents are not fully informed and have no knowledge, and therefore deny the same.

Your respondents further deny that the said railroad company and the said Smith or the Nebraska Land and Live Stock Company fraudulently induced said commissioners of Boone county to pretend to employ M. H. Sessions as attorney for said company on agreement with said company, and said Smith or either of them would pay for his services and that said county and said commissioners need not.

Said respondents further deny that said Sessions was so employed by said railroad company and by said Smith as attorney or by either of them to act for them and in their interest against the interest of the said county while pretending to act as the attorney thereof.

Respondents further deny that his fees and expenses for so doing were agreed by said company and the said Smith to be paid by them, and that in all that Sessions had done, pretending to act as attorney and counsel for said county and for the interests thereof, he has acted for the said railroad company and in its interests in pursuance of any fraudulent or illegal arrangement.

Denies that any fraudulent arrangement was ever made between said commissioners and said Smith in reference to the employment of counsel or between said railroad company and said county
52 commissioners in reference to the employment of M. H. Sessions or any one else, and denies all fraud whatever or combination or arrangement as alleged in said plaintiff's bill; denies that in pursuance of any fraudulent arrangement the said cause by which the taxes for said year were enjoined and annulled was commenced in a collusive, clandestine, and fraudulent manner.

Denies that said Sessions brought the said bill to Omaha, together with the stipulation and a decree, all prepared for entry, and filed the same in this court, paying the fees therefor on behalf of the said railroad company and said Hunnewell, and endeavored to have the said decree entered the same day for the purpose of preventing any knowledge thereof to come to the ears of the tax-payers of said county until after said decree had been entered; but, upon the contrary, respondents allege the fact to be that said tax-payers knew all about the appointment of Mr. Sessions to act for them and knew what the arrangements were as to the taxes for said years, and that one of them was present in court prior to and at the time the said decree complained of in plaintiff's bill of complaint was entered.

Your respondents deny that said Sessions was acting and did act in said cause under a retainer from the railroad company or said Hunnewell; denies that he was acting under retainer from said Smith and not from said county, but alleges the fact to be that he was duly employed by said county of Boone and acted honestly in his efforts to get the best decree he could under the circumstances for the county of Boone.

Denies that said Sessions had no authority whatever, in fact or in law, to sign the said stipulation or to appear in said court, and denies that the same was signed and filed in fraud of the rights of
53 said Boone county, and denies that the decree of this court entered in pursuance of an agreement thereof with said county and said Hunnewell was procured by fraud and collusion and is null and void.

Your respondents are not fully advised as to the outstanding indebtedness of Boone county or the several school districts of said county, but from information and belief denies that said outstanding indebtedness amounts to $100,000, as alleged in plaintiff's bill.

Your respondents are not advised as to what the indebtedness of said Boone county was in March, 1878, when the said decree was entered, but from information and belief denies that it was $70,000 at said date.

Your respondents admit that Horatio Hunnewell, who was complainant in the said bill of complaint by which the taxes were annulled, is a stockholder of the B. & M. railroad in Nebraska, and as such filed said bill for relief, but denies that said railroad company is the real party complainant in the said case, or that — fraudulently conspired together with the said board of county commissioners or with said Sessions to cause the said bill to be brought in the name of the said Hunnewell for the sole and only purpose of obtaining jurisdiction of the said bill in this court, all other parties thereto being citizens; admits that the bill which is mentioned in complainant's bill was the one filed by the said Horatio Hunnewell, but denies all fraudulent conspiring or fraud or fraudulent intention of the said railroad company and the said board of commissioners with the said Sessions or with any one else, either for the purpose of getting jurisdiction or for the purpose of having said taxes wrongfully enjoined.

Respondents further say that by answering thus fully they do not waive any of the imperfections in said bill or a want of state-
54 ment of sufficient facts in the bill of complainant, but still insist that said bill of complainant does not state facts sufficient to constitute a cause of complaint or to entitled complainant to any relief whatever, but that it ought to be dismissed as being insufficient upon its face.

The defendants further deny each and every allegation and matter and thing alleged or averred in plaintiff's petition, except what is herein expressly admitted, and say that the same are untrue.

Denies all fraudulent combination made either with M. H. Sessions, the attorney of the county, or with the county commissioners, and all collusion and fraud of whatever kind, and says that the said respondents acted in good faith in procuring said decree.

Second Cause of Defense.

Defendants, for further answer and by way of estoppel, not waiving any irregularity or imperfections in the bill of complainant, would further say that neither the said Burlington & Missouri River Railroad Company in Nebraska nor Horatio Hunnewell has any interest in the lands set forth in plaintiff's petition, either as a railroad company or Horatio Hunnewell as a stockholder of said railroad company, nor had said respondents at the time the bill in the case was filed any interest in the same.

And would further state that on or about the 9th day of Nov., 1877, the said respondent, Burlington and Missouri River Railroad Company in Nebraska, sold to the Nebraska Land and Live Stock Company 70,000 acres of land, or more, on contract; that although at the time the bill was filed by the said Horatio Hunnewell as stockholder and at the time the decree was rendered which is sought to be annulled and set aside for naught by this suit the said respondent, The Burlington and Missouri River Railroad Com-
55 pany in Nebraska, was the owner of said land, yet since that period the said Nebraska Land and Live Stock Company had fulfilled its contract, and that 60,000 acres of said land, on or about the 1st day of December, 1879, was deeded to the said Nebraska Land and Live Stock Co.; that at the date that said deed was made, and although it was understood by the agreement that the said company was to assume and pay the taxes complained of on said land so sold as being enjoined in plaintiff's bill of complaint, yet the said railroad company, relying upon said decree, did give, execute, and deliver to the said company a warranty deed for said taxes, yet, as a matter of fact, so far as the said taxes were concerned, the said company was to pay the same, and your respondent is in nowise interested in the same further than as above stated.

Your respondent would further say that as a part of the agreement and stipulation and consideration by which the said decree was entered perpetually enjoining the taxes referred to in plaintiff's bill of complaint that the said Nebraska Stock Company made an agreement with the commissioners of said county of Boone that it

would work out so much of the road and general-fund taxes at any point where the commissioners might designate, and would do the work, in lieu of paying said taxes, to the amount of $10,000 or more; and the respondent, B. & M. Railroad in Nebraska, in order to settle up the remainder of its lands, did further guarantee, in order that said work might be done and said taxes worked out by the said company as per agreement, did guarantee that the said company would do the amount of work above specified, and would pay by way of work the amount of taxes as above specified.

Your respondent further alleges that, it becoming apparent that said company was unable to work out said amount of taxes or to do the amount of work agreed upon, the B. & M. Railroad
56 Company did procure and cause work to be done on the roads at the places best fitted to benefit said county of Boone and as directed by said commissioners, to the amount of $8,000, which the said commissioners accepted as being done, as will more fully appear by receipt given under their hand and certificate, certified to by said commissioners of said county of Boone and made a part of the records of said Boone county, as will more fully appear by the records of said county.

That whatever there was of said contract made by said Nebraska Land and Live Stock Company with said commissioners for work upon said road which was not performed by the said B. & M. railroad the said company performed, as will more clearly appear by the records of said county.

The defendant would further say, by way of answer, that prior to the time that said decree which is now sought to be annulled was entered the United States of America had commenced a case, to wit, on or about the 9th day of November, 1875, to set aside patents for the land in question in Boone county, among other lands, and that said case to cancel said patents was at that time pending in the Supreme Court of the United States; that said bill of complaint was brought to set aside all patents issued outside of what was known as the twenty-mile limit of the land grant of the United States to the Burlington & Missouri River Railroad Company, which included the land in Boone county and all north of the Platte river.

That prior to the commencement of this suit by the United States the said Horatio Hunnewell had commenced a suit to set aside the taxes upon the land in question for the years 1873, 1874, and 1875, and that said case had been heard by demurrer and otherwise, but upon the inception and the commencement of the case by the United States court to set aside the patent to this land said case was dismissed without prejudice, the said Hunnewell not desiring to
57 prosecute it any further while the United States was trying to set the patents aside.

That at the date of the decree complained of that of the lands north of the Platte river, by the decision of this court, it had been decided that 150 thousand acres which had been patented to respondent R. R. Co. had been wrongfully patented and the patent should be set aside as to that amount, and that the attorney for the United States, upon the decision made by the court, had taken leave

to amend his bill so as to designate the lands, and that said Attorney General of the United States at the time the decree in question which is now sought to be annulled, at or about the time, threatened to bring a bill of review in the said case pending in the United States Supreme Court to designate and to have annulled the 150,000 acres on the north side of defendant's road, and that at the time said decree was entered the said Hunnewell or the said railroad company had no means of knowing whether they would not designate the lands in question or a great portion of them or at least some of them as to those which the patents ought to be annulled, and that under such circumstances the said Hunnewell, as a stockholder in the said railroad company, took the steps as he supposed necessary to annul the said taxes and in order to prevent the payment of any of them until it was ascertained that the land in question belonged to the railroad company.

And at the date of said decree in question the railroad company was expending large sums of money to induce immigrants to settle upon its lands, but refused to make any expenditures under the circumstances to settle or cause men to settle upon the lands in question, not knowing at the time whether the company owned them or not.

58 Respondents would further say that, at the date of said decree, by a decision of the supreme court of the State of Nebraska the taxes for the years 1873 and 1874, by reason of the fact that no certificate or oath such as is required by the law was *not* attached to the assessment-rolls, and by the further reason that, as shown by the records of said county, the said assessors had never exercised their own judgment, but had assessed said lands at prices fixed by the county commissioners for the fraudulent purpose of making the railroad pay more than its just proportion of taxes; that by virtue of the law, as interpreted by the supreme court at that period, at the date of said decree the said taxes for the said years were absolutely void and of no effect and was no lien upon said land.

That under the circumstances as aforesaid the said authorities of Boone county were unable to sell said lands for the taxes due upon them—in fact, in many instances the taxes unjustly levied or pretended to be levied were in excess of the value of the land—and that said authorities were unable by the ordinary process of law, to wit, by the sale of the lands either at public or private sale, to realize the amount of taxes due upon said lands at said date, although they had made repeated efforts to sell the said lands for the taxes or pretended taxes set forth in said bill of complaint.

That said county, finding that it was unable to collect the taxes as aforesaid and knowing at the time, through advice of counsel, that the larger portion of the taxes so levied were null and void and never could be collected, *they* made repeated efforts to the management of the Burlington and Missouri River Railroad Company in Nebraska to enter into some arrangement by which said

59 taxes or pretended taxes might be removed as an apparent cloud upon said real estate, so that they might levy taxes

which were legal and collect the same. This the railroad had refused to do. The county authorities were anxious to have their county settled up, and it was largely to the benefit of said county and the people thereof that the said railroad company by large expenses to itself should cause lands to be settled, and that said county might be settled up and said lands become of more value and better able to bear their portion or share of the expenses of the county, and that in pursuance of said design the said board of county commissioners appointed one M. H. Sessions as their attorney and counselor.

The directors of the railroad company having refused to take any steps to have said illegal taxes removed, to free said lands from these pretended liens Horatio Hunnewell, one of the stockholders of the said Burlington & Missouri River Railroad Company in Nebraska, did, on the 4th day of March, 1878, file his bill in this court to enjoin the taxes for the aforesaid years, and in looking over the taxes the said decree was entered by agreement made between the attorneys of the county on one side and the attorneys of Horatio Hunnewell on the other; that said Nebraska Land and Live Stock Company, who had purchased a large amount of said lands but was not yet the owner, and the railroad company having done work or had an agreement to work out the taxes for said years for the amount of about $20,000, it was considered that it was but fair, by the counsel, that all other taxes should be perpetually enjoined. Your respondents allege that there was not due to the county of lawful taxes more than said sum—in fact, only a much less sum was due said county for lawful taxes for said years 1873,'4, & '5, '6, & '7.

Your respondents allege that the said amount of lawful taxes was not due to the county which was worked out by the said
60 company and the railroad company, and that in reality the said company and the railroad company, under the direction of the commissioners of said county, did work to the full amount of the legal taxes against the lands for the years aforesaid.

Respondents further say that the taxes levied for the year 1875 in said Boone county were assessed and levied without authority of law, except about $725 of the same, and that the other levies made by the said county were made without any authority of law whatever, and likewise were the levies largely in excess of the authority made for the years 1876 & 1877, and your orator therefore alleges that the amount of taxes worked out by the Nebraska Land and Live Stock Company and by the said railroad company were equal, if they did not exceed, in amount the taxes that were lawfully levied and assessed by the said county of Boone for the years aforesaid, and that the entering of said decree under the circumstances was beneficial to the county, and they received more actual benefit than they could have by any attempt to collect the same; that all of said taxes were in such a shape that under and by virtue of the laws of the State of Nebraska, they being so many of them illegal, that by the mode of collection on real estate it was impossible to collect any of it.

That the said officers of Boone county, by levying illegal taxes with those that were legal, had made it impossible for them to col-

lect the legal taxes; that no one would purchase the land for the taxes, knowing that the sale would not avail anything, and by the fact that they did not know at the time whether the railroad company was the owner of said lands or not. The entry of said decree was for the benefit of the county under all the circumstances, and that said attorney for said county of Boone in doing or in agreeing to the entry of said decree acted in good faith and for the
61 interest of said county.

That after the said decree was entered perpetually enjoining the said taxes the said railroad company, as was understood, expended large sums of money, and so likewise did the Nebraska Land and Live Stock Company, in getting persons to settle upon the said lands, as was agreed upon, and commenced at once to sell them, the parties purchasing buying on the faith that said taxes were perpetually enjoined and not a lien upon any of the said lands.

That since the said decree was entered and prior to the commencement of this suit the said railroad company, without any knowledge whatever that Boone county had any intention to litigate or to reopen the decree, has sold all of said lands, largely to actual settlers, who have moved in, taken possession of said lands, and have made valuable improvements on the same, relying upon the fact that said taxes were not a lien upon the lands; that said railroad company owns none of the lands at the present time, but the whole have been deeded to other parties.

Your respondents further say that the said railroad company and the said Hunnewell, in order to facilitate the removing of said pretended taxes as a lien and as a cloud upon said lands and in order to facilitate the settling up of said county, inasmuch as they did not know at the time that said lands belonged to the said railroad company, *they* sold or bargained to the said Nebraska Land and Live Stock Company, of which Adam Smith, referred to in plaintiff's bill, was president and manager, a corporation duly organized under the laws of the State of Nebraska and doing business as such, at a low figure, to wit, about $1.00 per acre, *sold* 70,000 acres of said land with the understanding that said company became responsible
62 for any legal taxes that there might be upon the same and upon other lands in said county belonging to the said company, and in order that the settlement of said lands might be facilitated, and for further consideration that said company was to run the risk of the title of the said B. & M. Railroad Company, did sell the said amount of 70,000 acres as aforesaid.

That since the date of said decree perpetually enjoining said taxes the said respondent company has deeded to the Nebraska Land and Live Stock Company 60,000 acres of said land; that the said Adam Smith is now dead, having died some two years ago, and that said company is now managed by persons who are not familiar with the steps taken to have the lien of said taxes removed, nor the consideration paid nor the work done under the supervision of the commissioners of said county of Boone as part payment for said taxes.

That said company has been in peaceable possession of the said land and has made large expenditures upon the same, to wit, the

sum of $50,000, and have duly sold to actual settlers the greater portion of the 60,000 acres, who have settled upon the same in good faith, relying upon the fact that the taxes for the years 1873, 1874, 1875, 1876, and 1877 were not a lien upon the same, and have put on the same large amount of improvements.

Respondents therefore ask and suggest that the said Nebraska Land and Live Stock Company is a necessary party defendant to this suit, much more largely interested in the same than either of the respondents hereto, and ask that they may be made parties defendant.

Respondents further say that, relying upon said decree perpetually enjoining said taxes, the respondent, The B. & M. Railroad Company in Nebraska, proceeded at once at great cost to procure buyers,
63 selling the same at the law figures, and did, up to and prior to January, 1880, sell mostly to actual settlers—mostly to persons that bought from 80 to 160 acres apiece for the purpose of settling up—38,400 acres of said land, and that these persons settled upon the same prior to January, 1880, and improved the same, relying upon the fact that there *was* no taxes due upon them and no lien upon the same, and *has* lived in peaceable possession of the same ever since.

Respondents submit, under advice of counsel, that the said county of Boone allowing these men to buy and settle this land and take no steps for a period of over five years after the said decree complained of was entered, that the said county of Boone ought to be estopped, and that its laches have been so great that it would be inequitable at the present time to set aside said decree, which would have the effect to create a lien upon all of said land so sold and settled upon by the numerous persons who have bought in good faith and knew nothing about any effort that would be made to set aside said decree.

Respondents further say that on or about the 1st of June, 1880, the said respondent, The Burlington and Missouri River Railroad Company in Nebraska, sold to the Chicago, Burlington and Quincy Railroad Company 77,229 acres of said land.

That said Chicago, Burlington and Quincy Railroad Company at the time she purchased had no knowledge that any effort would ever be made to set aside the decree enjoining the taxes for the years aforesaid, but purchased in good faith, believing that said taxes for said years were no liens upon said land, and would not have purchased had it known that there would be any difficulty or attempt to open up the same.

That since the period and up to the time and prior to the time this suit was commenced the said Chicago, Burlington and Quincy Railroad Company have sold 75,000 acres of said land,
64 largely to actual settlers, mostly in tracts of 160 acres to each, and at much expense have induced men to come and buy the same relying all the time upon the fact that the taxes had been declared null and void for the years 1873, 1874, 1875, 1876, and 1877, and so represented to the said settlers, and that the said settlers, both those that bought from the Burlington & Missouri River Rail-

road Company in Nebraska and from the Chicago, Burlington and Quincy Railroad Company, relied upon the fact and had no knowledge that any attempt would ever be made to set aside said decree or that anything was wrong about said decree which annulled and cancelled the said taxes for the said years, but relied in good faith that they would not be disturbed and that said decree would not be set aside and a lien thus created upon the lands thus sold; that these parties bought largely in the years 1879 and 1880. A large portion was sold in said years.

Respondents submit, under advice of counsel, that each of said settlers and each of said persons that have bought portions of the 75,000 acres of land are proper and necessary parties to this suit and ought to be made parties; that the records of the said county of Boone will disclose who they are and what their interests are, and that the county of Boone well knew that a large number of persons had purchased this land relying upon the fact that said taxes had been enjoined and declared null and void and that no lien would ever be created.

They submit that said Boone county under the circumstances ought to be estopped, and that equity demands that the laches of said county have been so great that she cannot now disturb the said settlers and the buyers of these lands, who have bought in good faith, not knowing that any attempt would be made to set aside the said decree, from intermeddling or in anyway prosecuting the said suit, and that said county is estopped by its laches *by* interfering.

Your respondents further suggest that all of the lands so sold to the Chicago, Burlington and Quincy Railroad Company prior to the commencement of this suit was sold and deeded except about 2,229 acres, which the said company still owns.

Respondents therefore suggest that the Chicago, Burlington and Quincy Railroad Company is a necessary party to this suit, and that in fact the respondent, The Burlington & Missouri River Railroad Company in Nebraska, has been consolidated by sale with the Chicago, Burlington and Quincy Railroad Company.

Third Cause of Defense.

Respondents, for further answer and by way of estoppel, state that the plaintiff ought not to be admitted to ask for the cancellation of the judgment or decree in this case for the reason that on the 5th day of February, A. D. 1879, one Loran Clark, on behalf of himself and all other tax-payers of the county of Boone similarly situated, filed in this court his bill of complaint, making in said bill of complaint the same allegations and alleging the same grievances that the said plaintiff, Boone County, now alleges and asking for precisely the same relief that the said plaintiff in this action asks; that in said action the said Loran Clark, as tax-payer, for himself and all other tax-payers, made the following parties defendants, to wit, the Burlington and Missouri River Railroad Company in Nebraska, Horatio Hunnewell, the Board of County Commissioners of Boone

County, and S. P. Bollman, treasurer of said county, respondents; that said bill of complaint is hereto annexed, made a part of this answer, and marked Exhibit "B," by which it will more fully appear that the said bill of complaint was the same as the one now filed by plaintiff, asking for the same relief and making
66 the same allegations as to fraud, and that in fact, as respondents allege and believe, and by a comparison of the bills, the one filed by the plaintiffs is but a copy of the one filed by the tax-payers, as will fully appear by an inspection of said bill.

Respondents further allege that the said defendants, The Board of County Commissioners of Boone County and The Burlington and Missouri River Railroad Company in Nebraska, and the said Horatio Hunnewell, appeared and demurred to said bill; whereupon, after argument by counsel, the following decree and final judgment was entered by the court, after a full and due consideration, to wit:

At a session of the circuit court of the United States for the district of Nebraska continued and held, pursuant to adjournment, at the United States court-room, in the city of Omaha, on the 10th day of November, 1880, the Honorable Elmer S. Dundy being present and presiding in said court, the following, among other, proceedings were had and done, to wit:

LORAN CLARK, Suing for Himself and Others,
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN Nebraska, Horatio H. Hunnewell, The Board of County Commissioners of Boone County, and S. P. Bollman, Treasurer of said County.

The demurrer of the said defendants to the bill of complaint filed in this cause came on to be heard, and was argued by counsel. It is therefore ordered that the said demurrer be, and the same is hereby, sustained for want of equity in the said bill, and it is ordered, adjudged, and decreed that the said bill be, and it is hereby, dismissed at costs of said plaintiff.

67 Endorsed on the back as follows: No. 84. Doc. E. United States circuit court, district of Nebraska. Loran Clark *vs.* The B. & M. R. R. Co. *et al.* Copy of order of court.

EXHIBIT "B."

In the Circuit Court of the United States for the District of Nebraska.

LORAN CLARK, on Behalf of Himself and All Others Similarly Situated, Complainant,
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN Nebraska, Horatio H. Hunnewell, The Board of County Commissioners of Boone County, Nebraska, and S. P. Bollman, Treasurer of said County, Respondents.

To the honorable judges of the United States circuit court in and for the district of Nebraska:

Humbly complaining, your orator, Loran Clark, a citizen of Boone county, in the State of Nebraska, brings this his bill of complaint against the Burlington and Missouri River Railroad Company in Nebraska, a corporation organized under and by virtue of the laws of Nebraska and a citizen of said State; Horatio H. Hunnewell, a citizen of the State of Massachusetts; The Board of County Commissioners of Boone County, Nebraska, and S. P. Bollman, treasurer of said county, residents and citizens of said State of Nebraska, and for cause of complaint showeth unto your honors:

1. That he is a resident tax-payer of Boone county, Nebraska, and is duly authorized by at least one-third the tax-payers of said county, as well in amount as in number, to bring this bill of complaint as well upon their behalf as his own, they being similarly situated.

68 2. Your orator further says that the said Burlington and Missouri River Railroad Company in Nebraska is and has been since the year 1872 the owner of all the lands and real estate described in the list of the same attached to complainant's bill and referred to herein as Schedule "A;" that ever since the year 1872 up to the present time all of said lands were and are legally subject to taxation for all legal purposes in said county of Boone, Nebraska, and ought in law and equity to have paid and contributed during all of said years to the said State and county their proper and equitable proportion of taxes, and the same ought in law and equity to have been paid by said railroad company to the county and State aforesaid, yet your orator says that no taxes of any kind nor interest or penalties thereon have ever been paid by said railroad company or by any other person upon said lands, nor has any person ever offered to pay the same or any portion thereof.

3. Your orator further says that there have been duly and legally assessed and levied upon said lands by the proper authorities of Boone county, Nebraska, taxes for State, county, and school purposes for the following years in about the following amounts:

1873	$15,663 03
1874	11,958 05
1875	10,417 57
1878	15,628 53
1877	15,000 00

which, with legal interest, costs, and penalties thereon, now amounts to more than eighty thousand dollars.

4. Your orator further shows that said Horatio Hunnewell on the 4th day of March, 1878, filed his bill of complaint in this court against the other above-named respondents to compel
69 the cancellation of said taxes so assessed and levied against said lands and procure a decree of this court holding and declaring the same to be illegal and void; that on the same day, without the issue of process, the respondents, The Board of County Commissioners of said Boone county, by M. H. Sessions, a solicitor of this court, pretended to appear and file a stipulation consenting to said bill being taken *pro confesso* and to the entry of a decree in favor of said complainant for the relief prayed, granting a perpetual injunction against the collection of any of said taxes and declaring the same illegal and void and relieving the said lands from the lien thereof, which said decree was afterwards entered into this court on the — day of ——, 187–. A copy of the said bill filed by said Hunnewell is hereto attached, marked Exhibit "X," and referred to for greater certainty as to the allegations and prayer thereof.

5. Your orator further shows that for the years 1873 and 1874 there were assessors duly elected and qualified in each of the precincts of said Boone county.

That it is true, as alleged in the bill filed by said Hunnewell, that the board of county commissioners of said county for said years pretended to instruct the said several assessors as therein set forth; but your orator says that said board of county commissioners had no authority in law to give said instructions, and upon information and belief he says that said assessors in making their assessment for said years did not regard or follow said instructions, but proceeded in due form of law to assess and value all lands in said county for said years subject to taxation and did ascertain the fair, true value of the same and did return the same at its true assessable value.

That the assessment and valuation by them made of the
70 lands of said railroad company for said years was a fair, true valuation for taxable purposes and was the same as placed upon all other real estate of a similar kind in said county.

Your orator further shows that all of said assessors of said years duly subscribed and took the oath of office prescribed by law, and said oaths were in writing and are now on file in the office of the county clerk of said county. A copy of the oath of one of said assessors for the year 1873 is hereto attached, marked Exhibit "A," and a similar copy of one of said other oaths of office for the year 1874 is also attached, marked Exhibit "B."

That each of the other assessors duly subscribed and took an oath for their terms of office for said years of similar purport to those above designated, and the same are now on file as aforesaid.

Your orator says that said several assessors for said years, at the time required by law, duly made out their several assessment lists or rolls, including the assessment of the said lands, and duly returned the same into the office of the said county clerk and

to said board of county commissioners; that there are now no oaths and certificates of said assessors attached to said assessment lists as required by section 12 of chapter 66 of the General Laws of Nebraska; but your orator, upon information and belief, says that said assessors did take and subscribe said oaths and certificates and did attach the same to their said lists in the manner provided by law, but that said oaths and certificates have been in some manner detached from said lists and mislaid, and after such search as your orator could make before bringing this bill could not be found. Your orator says that for said years taxes were duly levied upon said lands of said company so as aforesaid duly assessed in about the amounts set forth in complainant's bill.

71 6. Your orator further says that for the years 1875, 1876, and 1877 no instructions of any kind were given to the several assessors of said county nor any of them concerning the assessment or valuation of property, except as appears from the following extracts from the proceedings of the county commissioners of said county of the dates following:

"February 1st, 1875. * * * On motion, the assessors were furnished the same scale of prices of personal property as for the year 1874."

"February 7, 1876. * * * On motion, the clerk was instructed to furnish the necessary assessment and census blanks to the precinct assessors, and to notify the assessors to use their own discretion in regard to the valuation of property."

"February 5th, 1877. * * * The assessors were instructed to see all the personal property and assess the same at a fair cash valuation and examine each tract of real estate."

That in each precinct of said county for each of said years there was an assessor duly elected and qualified and acting as such; that each of said officers duly subscribed and took an oath of office for each of said years, and the same are now on file in the office of the county clerk of said county; a copy of the oath of one of the assessors of said county for each of said years is hereto attached, and that all the other of said oaths so taken, subscribed, and filed are of similar purport thereto; said copies are marked respectively "C," "D," and "F;" that each of said assessors did, in each of said years, duly proceed to assess and value all the personal property and real estate in their several precincts in said county, including the said lands of said company, at its true and fair value for purposes of taxation; that in so doing they did not follow any instructions of said board of county commissioners, but proceeded lawfully

72 to ascertain and determine the true and fair value of all of said property, and so duly valued and assessed the same; your orator says that the said lands of said company for said years were in fact valued and assessed at a fair and true valuation and one that corresponded with the valuation of all other property in said county.

7. Your orator further says that each of said assessors for each of said years, at the time required by law, duly made and returned to the office of the county clerk of said county and to the county com-

missioners thereof a duly prepared assessment list of all the property in his precinct subject to taxation, together with a fair and true valuation of the same; that each of said assessors for each of said years duly subscribed, swore to, and attached to his assessment list an affidavit and certificate such as is required by section 12, chapter 66, of the General Laws of Nebraska, and the same have ever since been and now are attached thereto and on file in the said county clerk's office. Copies of said affidavits, made by one of the said assessors for each of said years, are hereto attached and marked respectively Exhibits "G," "H," and "I."

That all of said affidavits for each of said years are substantially of the same tenor and effect as that attached. Your orator says that said several assessments for said years were regular and valid in all respects; that the same were duly equalized and the taxes duly and legally levied thereon in about the amounts set forth in complainant's bill.

8. Your orator further shows that the officers of said county for the year 1875 duly and legally assessed and levied a tax of 10 mills on the dollar as a special bridge tax for the purpose of building bridges in said county, amounting to the sum of $1,451.49, upon said lands, and also levied a land road tax of 6 mills upon the
73 dollar valuation, which upon said lands amounted to $1,140.51; and also levied for said years in the several school districts of said county taxes for the payment of interest and principal of school bonds, which said taxes in said several districts amounted on said lands to $958.23.

Your orator further shows that for the year 1876 there was also duly assessed and levied in said county a land road tax of five mills on each dollar, which on the said lands amounted to the sum of $1,450.00.

Also a tax in the several school districts for the payment of interest and principal of school bonds, amounting on said lands to the sum of $1,129.25; and also the county officers of said county for said year, to provide a sinking fund for the payment of the principal and interest of the bonds of said county therefor, duly issued, assessed, and levied a tax of 16½ mills on the dollar, which on the said lands amounted to the sum of $4,442.27.

9. Your orator further says that one-half the special bridge tax levied for the year 1875, as set forth above, was afterwards duly cancelled and remitted by said board of county commissioners, and there is only a tax of five mills on the dollar valuation now standing against the lands of said company. Your orator submits, under the advice of counsel, that said taxes were duly and legally levied; that said board of county commissioners had full power and authority to levy the same as a valid and subsisting lien against all of said lands.

10. Your orator further submits, under the advice of counsel, that the land tax levied for the payment of interest and principal of school bonds, as set forth for the years 1875, 1876, and 1877,
74 are valid and legal taxes. The same were duly and regularly levied for said purposes; and your orator submits that said

board had full power and authority to levy the same, and that the same are now valid and subsisting liens against all of said real estate.

11. Your orator further shows that the taxes levied for the year 1876 for county sinking funds, for county roads, and for the year 1877 for county sinking funds, as set forth above, were legally and regularly levied in all respects; that said county had incurred a large bonded indebtedness, and that it was its legal duty to provide said funds by taxation for the payment of the interest and principal of the same; that said taxes were not excessive, and your orator submits, under the advice of counsel, that said board of county commissioners had jurisdiction and power to levy the same, and that they are valid and subsisting liens against all of said real estate.

12. Your orator says that all of said taxes for said years, as set forth in the complainant's bill, are and have been for a long time due and delinquent; that the same have not been paid nor any part thereof; and your orator submits, under the advice of counsel, that the same, with the interest and penalties thereon, as provided by law, are legal and regular in all respects, and are valid and subsisting liens upon all of the real estate aforesaid, and the said defendant, The Burlington and Missouri River Railroad Company in Nebraska, is in law bound to pay and satisfy the same and ought in equity and good conscience so to do; that said lands have received the benefits of the State and county government and ought in law and equity to contribute their just proportion of taxes for the support of the same.

75 13. Your orator further shows that in each of said years from 1873 to 1877, inclusive, the said board of county commissioners, at the time and place required by law, duly held a session as a board of equalization for the purpose of correcting all errors, both in the listing and assessment of personal property and real estate and in the valuation of the same Of the sitting of said board for each of said years due and legal notice was given, as required by law, and of the session of the said board in each of said years the said railroad company had due and legal notice; and your orator submits, under the advice of counsel, that it was the duty of said company and of all persons interested in said lands to appear before said board of equalization in each year and make complaint as to any errors and irregularities in the assessment and valuation of property and of any unlawful assessment thereof; that said company in each of said years failed, neglected, and refused to appear before said board and question the assessment or valuation of said lands, except that for the years 1875, 1876, and 1877 said company caused to be filed with said board of equalization an affidavit for each of said years, complaining that the valuation placed upon said lands was too high; that said commissioners refused to allow the claim of said company and decided in each of said years upon said applications that said assessments were not excessive; to which decisions said company never took exceptions or took action to reverse the same; and your orator submits that said

company and all other persons are now estopped from contesting in any way the legality or regularity of said assessments.

14. Your orator further shows that in January, 1878, the county commissioners of said Boone county and the county clerk
76 thereof left said county of Boone and went to Lincoln, in the county of Lancaster, Nebraska; that as your orator is informed and verily believes and he charges the fact to be they so went at the special instance and request of said railroad company; that at said Lincoln, on the 30th day of January, 1878, the said county commissioners, pretending at said time and place to act as the board of county commissioners for said Boone county, met with certain agents, attorneys, and officers of the said railroad company, and with one certain Adam Smith, at that time a citizen of Chicago, in the State of Illinois, and your orator is informed and verily believes, and so charges the fact to be, that said parties at said time so met together and confederating together for the purpose of defrauding your orator and all other citizens and tax-payers of said county, undertook fraudulently and without any authority of law whatever to enter into a certain pretended contract, and said commissioners did sign and deliver to said company a pretended contract, a copy of which is hereto attached, marked Exhibit "K;" that there was no consideration for said pretended contract; that said commissioners at said time and place acted as individuals and not as a board of county commissioners, and your orator submits, under advice of counsel, that said pretended action was and is of no binding or valid effect whatever.

15. Your orator further says that the pretended consideration for said pretended action and for the signing and delivery of said pretended contract was the execution at said time and place of certain documents, of which copies are hereto attached, marked respectively Exhibits "L" and "M," the precise name or nature in law of which documents your orator, under the advice of coun-
77 sel, professes himself unable to state, but submits the same to the consideration of the court; but your orator says there is no warrant in law for the execution of any such documents; that said commissioners had no authority to accept the same or to become parties thereto, and the same conferred no benefits or rights upon said county whatever.

16. Your orator further shows that at said time and place the said commissioners, pretending to act for said county and as officers thereof, and, as your orator is informed and believes and so charges the fact to be, intending to injure and defraud said county out of the taxes legally and justly due it from said railroad company, and to defraud your orators and the tax-payers of said county, signed a writing purporting to be an employment of N. H. Sessions as attorney for said company, and pretending to authorize him to appear in court and act for it concerning any litigation brought against said county concerning the legality of said taxes, a copy of which is hereto attached, marked Exhibit "H;" but your orator submits to the court, under the advice of counsel, that said commissioners acted as individuals and not as officers of said county; that they

had no authority in law to execute said paper for said county or to confer upon said attorney the power and rights therein pretended to be bestowed upon him by said county, and that no authority was in fact conferred upon said attorney — the power and rights therein pretended to be bestowed upon him by said county, and that no authority was in fact conferred upon said attorney to act for said county in any way whatever.

17. Your orator further shows that he is informed and believes and so charges the fact to be that to induce said commissioners to enter into the fraudulent arrangement aforesaid the said railroad company and said Smith agreed to pay and did pay all the
78 expenses of the said commissioners from Boone county to said Lincoln and return and all their expenses at said city of Lincoln; that said company and said Smith fraudulently induced said commissioners to pretend to employ said M. H. Sessions as attorney for said county on an agreement that said company and said Smith would pay him for his services and that said county or said commissioners need not do so; that said Sessions was so engaged by said railroad company and said Smith as an attorney to act for them and in their interest and against the interest of said county while pretending to act as the attorney thereof, and that his fees and expenses for so doing were agreed by said company and said Smith to be paid by them, and that in all that said Sessions had done pretending to act as attorney and counsel for said county and for the interest thereof he has, as your orator is informed and believes, acted for said company and in its interest, in pursuance of said fraudulent and illegal arrangement made between said commissioners and said company and Smith as aforesaid.

18. Your orator further says that of the fraudulent arrangement aforesaid the said H. H. Hunnewell had full knowledge and was, by his attorney, a silent party thereto; that in pursuance of said fraudulent arrangement the said cause was commenced in a collusive, clandestine, and fraudulent manner; that said Sessions brought the said bill to Omaha, together with the said stipulation and a decree, all prepared for entry, and filed the same in this court, paying the fees therefor on behalf of said railroad company and said Hunnewell, and endeavored to have said decree entered the same day the bill was filed for the purpose of preventing any knowledge thereof to come to the ears of any tax-payer of said county until after said decree had been entered.

Your orator says he is informed and believes and charges the
79 fact to be that said Sessions was acting and did act in said cause under retainer from said railroad company and said Hunnewell or from said Smith and not from said county; that he had no authority whatever, in fact or in law, to sign the said stipulation; that the same was signed and filed in fraud of the rights of said Boone county and of the tax-payers thereof, and your orator submits, under advice of counsel, that the same is of no effect or force whatever, and that the decree of this court, entered in pursuance thereof, was so procured by fraud and collusion and is null and void and should be vacated; that the same was a fraud upon this honorable court and

greatly prejudicial to your orator and the tax-payers of said Boone county.

19. Your orator further shows that said county of Boone now has an outstanding indebtedness of about fifty thousand dollars; that the several school districts of said county have large outstanding indebtedness, the amount of which your orator cannot now state; that said amount of taxes set forth in complainant's bill, with interest and penalties thereon, when collected and paid into the treasury of said county, are in law applicable for the payment of said indebtedness and would nearly or quite pay and cancel the same; that your orator and all other tax-payers of said county have during said years paid into the treasury of said county the taxes levied against their personal property and real estate and the same has been applied to pay the expenses of the county government and to pay off the indebtedness thereof; that if said taxes upon said lands are, as they ought to be, paid and applied upon said indebtedness and the same is thereby cancelled and discharged, your orator and the other tax-payers of said county
80 will not be compelled to pay taxes for the payment of any part of said indebtedness except what has already been levied against them, but if the said decree so fraudulently obtained stands, then your orator's lands and all other lands of tax-payers in said county will be holden for the payment and satisfaction of said indebtedness and will have to pay large and unjust taxes for the payment of the same; that there is no way to pay off and discharge said indebtedness except by the levying and collecting taxes each year upon and from the lands of your orator and of the other tax-payers of said county.

20. Your orator further says that said indebtedness is at least fifteen per cent. of the entire assessed valuation of said county; that it is unjust and inequitable that your orator and the tax-payers of said county similarly situated should be compelled to pay said indebtedness, and that the lands of said railroad should be discharged therefrom; that any arrangement to that effect, such as has been attempted by the fraud of said several respon lents, would greatly wrong and injure your orator and the tax-payers of said county; that thereby the lands of your orator and of said tax-payers in said county would be greatly reduced in value and would be and become nearly or quite worthless.

21. Your orator further shows that at a mass meeting of the tax-payers of said county lately held the said pretended action of the said commissioners was expressly disaffirmed, and your orator was authorized by said tax-payers to bring this his bill as well for them as for himself.

22. Your orator further shows that if said decree is permitted to stand as the judgment of the court, although so obtained by the collusion and fraudulent confederating together of the said
81 several respondents as well as of the said Adam Smith, who pretends to have some interest in said taxes and in said decree, the exact nature of which is unknown to your orator and he

cannot now state, your orator is without remedy unless permitted to maintain this his bill to set aside the same.

23. That the matter in dispute herein is more than five hundred dollars, exclusive of costs.

24. That if said decree stands, then it will occasion a multiplicity of suits by the several tax-payers of said county to recover back the taxes paid by them, levied in the same manner and for the same years as the ones above described, and many of which have been paid by said tax-payers under protest.

25. Your orator represents that Horatio H. Hunnewell, who was complainant in said bill, is a stockholder of the said railroad company, and as such filed said bill for relief, but your orator, upon information and belief, alleges and avers that said railroad company was the real party complainant in said case, and fraudulently conspiring together with the said board of county commissioners and with said Sessions, caused said bill to be brought in the name of said Hunnewell for the sole and only purpose of obtaining jurisdiction for said bill in this court, all of the other parties thereto being citizens of the State of Nebraska.

26. Your orator further refers to the proceedings and records of the court in said case mentioned above to more fully show, reference thereto being had, the nature of said proceedings, the facts alleged in the bill filed therein, and the various allegations concerning the same, as herein made.

27. Your orator further shows that he had well hoped that the said respondents, well knowing the decree aforesaid was so fraudulently obtained, would not have insisted upon the same, but
82 that said company would have paid the full amount of said taxes, as they in equity ought to do; but now so it is that said respondents pretend that said decree was fairly and properly obtained, and that all of said lands are relieved and freed from the lien of said taxes, and that the same are cancelled and adjudged to be null and void, and the said company still refuses to pay the same or any part thereof; all which doings, actings, and pretences of the said defendants are contrary to equity and good conscience and tend to manifest wrong, injury, and oppression of your orator in the premises.

In tender consideration whereof and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are cognizable and relievable, to the end, therefore, that your orator, as well as all others similarly situated, may have that relief which they can only obtain in a court of equity, and that the defendants may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by the complainant, and that the said decree declaring the said taxes illegal and void and perpetually enjoining and restraining the collection of them and all of them may, for this reason and under the circumstances aforesaid, be set aside by this honorable court and declared to be fraudulent and void, and that said taxes and all of them may be examined by the court and declared valid and

regular and subsisting liens upon the real estate described here; and that if the court shall find any of the taxes illegal and void the defendant, The Burlington and Missouri River Railroad Company in Nebraska, may, by the decree of this court, be ordered
83 to pay into court for the use and benefit of said Boone county such amount of taxes, with legal interest and penalties thereon, as may by the court be found to be valid and legal, as a condition precedent to the granting of any relief in favor of said company or said Hunnewell as against the lien or collection of said taxes; that the defendants and each of them be perpetually enjoined from compromising, cancelling, or remitting, except upon full payment thereof, any of said taxes so found by the court to be valid and legal, and for such other or further relief as the nature of this case may require and to your honors seems meet—

May it please your honors to grant unto your orator a writ of subpœna to be directed to the said Horatio H. Hunnewell, the Burlington & Missouri River Railroad Company in Nebraska, The Board of County Commissionors of Boone County, Nebraska, and S. P. Bollman, treasurer of said county, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to your honors shall seem agreeable to equity and good conscience.

And your orator will ever pray, &c.

JOHN M. THURSTON,
Solicitor for Complainant.

UNITED STATES OF AMERICA, }
District & State of Nebraska, Douglas County, } *ss:*

Loran Clark, being duly sworn, says he is the complainant in the foregoing bill of complaint against the respondents the reinnamed; that he has heard read the above bill and knows the con-
84 tents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

LORAN CLARK.

Subscribed in my presence and sworn to before me this 4th of October, 1878.

[SEAL.] THOMAS S. McMURRAY,
Notary Public.

Third Cause of Defense.

Respondents for further answer say that the complainant ought not to have his said action because he failed and refused to bring the same within four years from the time the said complainant discovered the fraud or pretended fraud set up in said bill of com-

plaint, and that said complainant, Boone County, allowed over five years to elapse after they had full knowledge of the whole transaction as to entry of the said decree now complained of before they took any steps to annul the same; and respondents submit, under advice of counsel, that said county is now barred of any relief by the statutes of limitations of the State of Nebraska, as well as by other laches, in not commencing said suit until the said lands had all been sold to parties who knew nothing about the circumstances under which said decree was entered; and further allege that the board of county commissioners and each one of said commissioners and the officers of said county of Boone and the tax-payers of said county of Boone well knew and had full knowledge of all the circumstances under which the said decree enjoining the taxes for the said years 1873, 1874, 1875, 1876, and 1877 was entered in this court, and was procured more than four years prior to the commencement of this suit.

Respondents therefore allege, under advice of counsel, that
85 said suit is barred by the statutes of limitations of the State of Nebraska.

Respondents therefore pray that it may be found that there is no equity in the bill of complainants, and that said bill may be dismissed for want of equity at costs of complainants, and for such other and further relief as equity may require.

T. M. MARQUETT,
Attorney for Respondents.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

T. M. Marquett, being first duly sworn, deposeth and saith that the matters and things set forth in the foregoing answer are true as he verily believes.

T. M MARQUETT.

Subscribed in my presence and sworn to before me this seventh (7) day of January, A. D. 1884.

ELMER D. FRANK, *Clerk.*

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 30, H. Circuit court of the United States, district of Nebraska. County of Boone *vs.* The Burlington & Missouri River Railroad Company in Nebraska and Horatio H. Hunnewell. Answer. Filed Jan. 28, 1884. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 12th day of May, 1884, replication was filed in said case; which said replication is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

THE COUNTY OF BOONE
vs.
86 THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA and HORATIO H. HUNNEWELL. } No. 30, H.

The replication of The County of Boone, plaintiff, to the answer of The Burlington and Missouri River Railroad Company in Nebraska and Horatio H. Hunnewell, defendants.

This repliant, saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill of complaint it has already prayed.

J. S. MILLER AND J. C. COWIN,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 30, doc. H. U. S. circuit court, district of Nebraska. In equity. The County of Boone *vs.* The B. & M. R. R. Co. in Nebraska *et al.* Replication. Filed May 12, 1884. Elmer D. Frank, clerk. J. S. Miller & J. C. Cowin, solicitors for plaintiff.

87 Thereupon, afterwards, to wit, on the 4th day of August, 1884, depositions were filed in said case; which said depositions are in words and figures following, to wit:

Index.

Copy of order of court.
Stipulation.
Exhibits "A, B, C, D, E, F, G, H, I, & K."
Notice & subpœna (T. H. Bollman), page 58.

	Direct.	Cross-ex.	Re-d.	Recross.
S. H. Bollman	2			
" " recalled	10			
" " "	11	12	12	13
S. P. Bollman	2	7	9	
Edwin Broadbent	14	31	39	
Thomas Thompson Wilkinson	40	51	53	55
John Peters	56			
Thomas H. Bowman	59	70	75	
Elmer D. Frank	76			
Certificate, page	78			
Fee bill, page	80			

COUNTY OF BOONE
vs.
B. & M. R. R. Co. } Complainant's Testimony.

At a session of the circuit court of the United States for the district of Nebraska continued and held, pursuant to adjournment, at the United States court-room, in the city of Omaha, on the first day of July, 1884, the Honorable Elmer S. Dundy, judge, being present and presiding in said court, the following, among other, proceedings were had and done, to wit:

COUNTY OF BOONE
vs.
THE B. & M. R. R. Co *et al.* } 30, H.

On motion, it is ordered by the court that the order entered herein on the 27th of June, 1884, appointing Mrs. Cal. Valentine special examiner in chancery to take and report to the court the testimony in this cause be, and the same hereby is, revoked and set aside, and C. P. Drennen, of Omaha, in said district, is appointed special examiner for said purpose in lieu of said Mrs. Cal. Valentine. Cause ordered continued.

THE UNITED STATES OF AMERICA,
District of Nebraska, } *ss:*

88 I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the above and foregoing is a true copy of an order entered upon the journal of the proceedings of said court in the cause therein entitled; that I have compared the same with the original entry of said order and it is a true transcript therefrom and of the whole thereof.

Witness my official signature and the seal of said court, at Omaha, in said district, this 25th day of July, A. D. 1884.

[SEAL.] ELMER D. FRANK, *Clerk.*

Endorsed: No. 30, doc. H. United States circuit court, district of Nebraska. Boone County *vs.* B. & M. R. R. Co. *et al.* Order of court.

In the Circuit Court of the United States for the District of Nebraska.

THE COUNTY OF BOONE, Plaintiff,
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA and H. H. HUNNEWELL, Defendants. } Stipulation.

It is hereby stipulated that the testimony of witnesses for the complainant and respondents may be taken at Albion, in said county, before C. P. Drennen, a special examiner in chancery to take testimony in said case, commencing on the 8th day of July, 1884, at 10 o'clock a. m., at the office of the county clerk of said county; and the taking of said testimony shall be continued from day to day until all the testimony there to be presented shall be completed.

J. C. COWIN,
Attorney for Complainant.
T. M. MARQUETT,
Att'y for Respondents.

Endorsed: No. —, docket —. U. S. circuit court, district of Nebr. The County of Boone, plaintiff, *vs.* The Burlington &
89 Missouri River Railroad Company in Nebraska and H. H. Hunnewell, defendants.

Stipulation.

"EXHIBIT A."

Articles of agreement made this 18th day of July, A. D. 1877 by and between Harvey Maricle and Edwin Broadbent, county commissioners of Boone county, Nebraska, of the first part, and Adam Smith, of Chicago, Ills., of the second part, witnesseth:

That whereas there is a large sum of money now levied on the lands of the B. & Mo. Railroad Company for some five years past, and that said railroad company have neglected to pay said levies and dispute the legality of said taxes; and whereas the county is sparsely settled and the settlers are anxious to have the lands in said county settled and have improvements made and to have taxable property come in the county, so the present property-holders shall not have all the expense of the county to bear; and whereas said Adam Smith has made the proposition to buy of said B. & M. Railroad Company about one hundred thousand acres of their lands in said Boone county for the purpose of settling and improving the same as fast as it can be done to advantage; and said Adam Smith, his heirs and assigns, also agree to make a graded wagon road, to be built on the most direct line which is passable between Albion and the city of Columbus, Platte Co., Nebr.,

or the town of Clarksville, Merrick county, Nebr., on the Union Pacific railroad, is to be well graded and bridged, properly constructed so as to make a good wagon road, and to be commenced this fall and to be done as fast as one grading machine can do the work, but to be completed within 12 months from date, unless said Adam Smith should be enjoined or in some way prevented from going on to construct said road, and in any such event said Adam Smith shall use due diligence to prosecute and complete the work as fast as the circumstances will permit.

In consideration of the above purchase of lands and the
90 construction of said wagon road we, the county commissioners of Boone county, Nebraska, agree with said Adam Smith that all the taxes now levied on said B. & M. Railroad Company's lands shall be abated and cancelled in such a way and manner as shall be legal and proper, so as to relieve said lands from any and all liens in consequence of said taxes.

And it is expressly agreed and understood by and between the parties to this contract that hereafter the lands bought by said Adam Smith shall be subject to assessment and taxation the same as other lands and property, and that the taxes shall be promptly paid at maturity; also said Adam Smith agrees to get assurance from said B. & M. Railroad Company that they will also pay the regular assessment and taxes on all lands not sold in Boone county, as they become due and payable, promptly and without delay or cost to said Boone county.

It is agreed and understood that this contract shall not be binding on said Boone county commissioners to remit or cause to be remitted said taxes to said B. & M. Railroad Company's lands until the foregoing undertakings and stipulations are complied with or such security as shall be satisfactory to said county commissioners of Boone county, to wit:

First. The purchase of said lands.

Second. The constructing of said wagon road.

Third. The assurance as to the further payment of all the assessment and taxes on all the lands now belonging to said B. & M. R. R. Co.

HARVEY MARICLE, *Chairman.* [SEAL.]
EDWIN BROADBENT. [SEAL.]
ADAM SMITH. [SEAL.]

Witness:
LORAN CLARK,
F. M. SACKETT.

I hereby certify the above to be a true copy of the original papers now on file — the office of the county clerk, Boone Co., Nebr.

Witness my hand and official seal this 17th day of July, A. D. 1884.

[SEAL.] JOHN PETERS,
County Clerk, Boone Co., Nebr.

91 Endorsed: Original transaction with Adam Smith. Filed Aug. 4, 1884. Elmer D. Frank, clerk.

"EXHIBIT B."

LINCOLN, NEBRASKA, *January* 30, 1878.

Memorandum of agreement made by and between the Burlington and Missouri River Railroad Company in Nebraska, first party, and the County of Boone, Nebraska, by its commissioners, of the second part, and the Nebraska Land and Live Stock Company, of the third part.

Whereas parties of the 1st and 3rd parts have this day entered into an agreement and bonds for the performance of certain obligations conditional on the absolute release by the second party of all illegal taxes levied upon the lands of the first and third parties in the county of Boone, Nebraska, for the years 1873 to 1877, inclusive:

Now, therefore, the party of the second part hereby agrees, by its commissioners and by its authorized attorney, M. H. Sessions, to enter into the necessary stipulation and to have decree of court entered up in the circuit court of the United States for the district of Nebraska eradicating the whole of the taxes now charged against the lands of the first and third parties for the above years, all of said taxes having been examined and agreed upon as being illegal and void.

THOMAS T. WILKINSON, *Chairman*,
EDWIN BROADBENT,
T. H. BOWMAN, *Co. Commissioners.*
M. H. SESSIONS,
Att'y for Boone County.

Attest: JOHN PETERS,
County Clerk.

Endorsed: Filed Aug. 4, 1884. Elmer D. Frank, clerk.

"EXHIBIT C."

LINCOLN, NEBRASKA, *January 30th*, 1878.

Know all men by these presents that a certain contract bearing date July 17th, 1877, having been made by the county of Boone, through its commissioners, and Mr. Adam Smith, of Chicago, Illinois, wherein the second party agreed to make the purchase of certain lands of the Burlington and Missouri River Railroad Company in Nebraska, and to pay all legal taxes assessed thereon
92 for the year 1878 and thereafter, and to make certain improvements in the county of Boone, in consideration of which the county commissioners of the said county agreed, at some future day, to take the necessary legal steps for the wiping out of all the illegal taxes claimed to be due upon the lands of the said Burlington and Missouri River Railroad Company in Nebraska for the years 1873, 1874, 1875, 1876, and 1877;

And whereas the second party has partly completed the improve-

ments agreed upon and has entered into a bond for the completion of the same; and whereas the second party is now prepared to enter into the necessary obligations for the payment promptly hereafter of the legal taxes;

And whereas the county commissioners have this day taken the necessary legal actions for the wiping out of all the illegal taxes claimed to be due for the said years above mentioned;

And whereas the said Adam Smith has transferred his rights to the Nebraska Land and Live Stock Company, which said company has assumed all duties and obligations of said Adam Smith:

Therefore it is hereby agreed, and the Nebraska Land and Live Stock Company binds itself in the sum of ten thousand dollars ($10,000.00), to pay all legal taxes for the years 1878 to 1882, inclusive, which may be levied upon the lands purchased by the said Nebraska Land and Live Stock Company from the said railroad company in the county of Boone, Nebraska; and the said Nebraska Land and Live Stock Company hereby binds itself, under the same penalty as above stated, to pay all taxes which may be levied upon the lands of the Burlington and Missouri River Railroad Company in the said county of Boone, Nebraska, for the said years 1878 to 1882, inclusive, should said railroad company fail to pay the said taxes.

NEBRASKA LAND AND LIVE STOCK CO.,
By ADAM SMITH, *Pres't.*

The Burlington and Missouri River Railroad Company in Nebraska binds itself in the sum of ten thousand dollars
93 ($10,000.00) to pay all legal taxes for the years 1878 to 1882, inclusive, upon all its lands in Boone county, Nebraska, which have not been absolutely sold and deeded to the Nebraska Land and Live Stock Company or to other parties.

BURLINGTON AND MISSOURI RIVER
RAILROAD COMPANY IN NEBR.,
By A. E. TOUZALIN, *Land Com'r.*

I, John R. Clark, of Lincoln, Nebraska, do hereby bind myself in the sum of ten thousand dollars ($10,000.00) for the performance by the Burlington and Missouri River Railroad Company in Nebraska of the above obligations as entered into by the said railroad company should said railroad company fail to carry out this obligation as therein stated.

JOHN R. CLARK.

Endorsed: I hereby certify that the above is a true copy of the original papers now on file in the office of the county clerk of Boone Co., Nebr. Witness my hand and official seal this 17th day of July, A. D. 1884. (Seal) John Peters, county clerk, Boone county, Neb. Bond of Smith, Touzalin, and Clark. Filed Aug. 4, 1884. Elmer D. Frank, clerk.

"EXHIBIT D."

In pursuance of a certain contract entered into by Adam Smith, of Chicago, Illinois, with the county of Boone, Nebraska, for the completing of a certain road from Albion, the county-seat of said county, to a point on the Union Pacific railroad, said road having now been partly completed: Now, therefore, the Nebraska Land and Live Stock Company doth by this bond bind and obligate itself in the sum of ten thousand dollars ($10,000.00) to complete the said road, as shown forth in the said agreement with the said Boone county, within the time of the said contract entered into by the said Adam Smith, the intention of this bond being to obligate the said Nebraska Land and Live Stock Company in the sum of ten
94 thousand dollars for the full performance by the said Adam Smith of the agreement made with the said county of Boone, Nebraska.

NEBRASKA LAND AND LIVE STOCK CO.,
By ADAM SMITH, *Pres't.*

Jan'y 30, 1878.

Endorsed: I hereby certify that the above is a true copy of the original now on file in the office of county clerk, Boone Co., Nebr. Witness my hand and official seal this 17th day of July, A. D. 1884. (Seal) John Peters, county clerk, Boone county, Nebr. Filed Aug. 4, 1884. Elmer D. Frank, clerk.

"EXHIBIT E."

Commissioners' Record, Thirteenth Session, April 22nd, 1873.

Board met at the office of the county clerk, April 22nd, 1873, as a board of equalization.

Present: Commissioners Wanzer, Farrell, and Atwood.

Minutes read and approved, after which the board proceeded to examine the reports of precinct assessors. Various changes and alterations were made in the same. Grievances were heard from several parties by the board, who claimed to have been assessed too high. The same were examined, inquired into, and made to conform to the standard of like property.

* * * * * * *

On motion, the board adjourned.

JOHN D. FARRELL.
HORACE WANZER.
ELIAS ATWOOD.

Attest: W. J. NELSON, *Clerk.*

Commissioners' Record, Thirty-first Session, April 23rd, 1873.

Board met at the office of the county clerk, April 23rd, A. D. 1873.
Present: Commissioners Wanzer, Farrell, and Atwood.
Minutes read and approved. The board continued the examina-

tion of the assessment-rolls. Parties having lost stock in
95 the recent severe storm appeared and asked the board for an abatement of their assessment on the lost stock. Several parties made application for an abatement on the assessed value of their wagons, some of which were found to be down to the standard and others were not, but were placed there by the board.

* * * * * * *

On motion, the board adjourned to meet at the office of the county clerk May 2nd, A. D. 1873.

JOHN D. FARRELL.
ELIAS ATWOOD.

Attest: W. J. NELSON, *Clerk.*

I hereby certify that the above and foregoing is a true copy as appears on the commissioners' record of Boone county, as a board of equalization, year 1873.

Witness my hand and official seal this 23rd day of July, A. D. 1884.

[SEAL.] JOHN PETERS,
County Clerk.

Endorsed: Filed Aug. 4, 1884. Elmer D. Frank, clerk.

Commissioners' Record, Fifty-first Session, April 20th, 1874.

Board met pursuant to adjournment.
Present: Commissioners Hamilton, Broadbent, and Wilkinson.
Minutes of last meeting read and approved. On motion, the poll tax of 1873 of Mr. A. Dresser was released on acc't of disability.

* * * * * * *

The board then proceeded to the equalization of taxes. Mr. L Clark then presented the cash price-list of the B. & M. R. R. R. in Boone county. The board compared their prices with the assessment of the assessors and reduced a portion of the assessment on their poor lands to compare with their prices. On motion, adjourned to meet Tuesday, April 21st, 1874, at 10 o'clock a. m.

WM. H. HAMILTON.
EDWIN BROADBENT.
T. T. WILKINSON.

Attest: JOHN PETERS, *County Clerk.*

96 EXHIBIT "F."

Commissioners' Record, Fifty-second Session, April 21st, 1874.

Board met pursuant to adjournment.
Present: Hamilton, Broadbent, & Wilkinson.
Minutes read and approved.

* * * * * * *

The board then proceeded to the equalization of taxes.
On motion, adjourned to meet April 22nd.

WM. H. HAMILTON.
EDWIN BROADBENT.
THOS. T. WILKINSON.

Attest: JOHN PETERS,
County Clerk.

Commissioners' Record, Fifty-third Session, April 22, 1874.

Board met pursuant to adjournment.
Present: Commissioners Hamilton, Broadbent, and Wilkinson.
Minutes read and approved.
No business appearing before the board of equalization, the following business was transacted:

* * * * * * *

On motion, adjourned to meet the 1st Monday in June.

WM. H. HAMILTON.
EDWIN BROADBENT.
THOS. T. WILKINSON.

Attest: JOHN PETERS,
County Clerk.

I hereby certify that the above and foregoing is a true copy of the commissioners' proceedings as appears on the records of Boone county, Nebr., as a board of equalization, year 1874.
Witness my hand and official seal this 23rd day of July, A. D. 1884.

[SEAL.] JOHN PETERS,
County Clerk, Boone County, Nebraska.

Endorsed: Filed Aug. 4, 1884. Elmer D. Frank, clerk.

Commissioners' Record, Sixty-sixth Session, April 19th, 1875.

Board met as a board of equalization.
Present: Com. Wilkinson, Broadbent, and Maricle, and Sheriff Day.
Minutes of last meeting read and approved.

* * * * * * *

97 After dinner several changes *was* made on assessment blanks.

* * * * * * *

Adjourned to meet at 9 o'clock the 20th.

EDWIN BROADBENT, *Chairman.*

Attest: JOHN PETERS,
County Clerk.

EXHIBIT "G."

Commissioners' Record, Sixty-seventh Session, April 20th, 1875.

Board met pursuant to adjournment, — a board of equalization.
Present: Com. Wilkinson, Broadbent, and Maricle, and the sheriff.

Several parties appeared before the board and had their assessments corrected. The Union Pacific Railroad Company presented a list of their unsold, unpatented lands, viz., all of section 9, S. ½, S. W., and S. W. ¼ 13; N. W. ¼, S. E. ¼, and S. ½ S. E. 13; all of 15, all of 17, all of 19, and all of 21, in township 18, range 5 west, to have the same erased from the tax list.

On motion, the same was granted.

The Burlington and Missouri River Railroad Company presented, by their agent, L. Clark, an affidavit sworn to by A. E. Touzalin, land com'r of said railroad, a statement and price-list of their lands in Boone Co., demanding that the board of equalization place the assessment of the B. & M. R. R. lands at the price as set forth in the price-list presented by said B. & M. R. R. Company, on which there was no motion taken.

* * * * * * *

On motion, adjourned to meet at 9 o'clock a. m. on April 21st.

EDWIN BROADBENT, *Chairman.*

Attest: JOHN PETERS,
County Clerk.

Commissioners' Record, Sixty-eighth Session, April 21, 1875.

Board met pursuant to adjournment, as board of equalization.

Present: Com'rs Wilkinson, Broadbent, and Maricle,

Several parties appeared before the board and had their assessments corrected.

* * * * * * *

On motion, adjourned to meet on the 1st Monday in July.

EDWIN BROADBENT, *Chairman.*

Attest: JOHN PETERS,
County Clerk.

98 I hereby certify that the above and foregoing is a true copy of the commissioners' proceedings as appears on the records of Boone county, Nebr., as a board of equalization, year 1875.

Witness my hand and official seal this 23rd day of July, A. D. 1884.

[SEAL.] JOHN PETERS,
County Clerk, Boone County, Nebraska.

Endorsed: Filed Aug. 4, 1884. Elmer D. Frank, clerk.

Commissioners' Record, Seventy-ninth Session, April 17th, 1876

Commissioners met as board of equalization.

Present: Commissioners Broadbent, Maricle, and Wilkinson.

A great many complaints *was* made of the assessment of Manchester precinct on stock and farm machinery, and the board corrected said assessment to correspond with the assessment of the other precincts of the county. Doran Clark, ag't for Burlington and Missouri River railroad, presented the affidavit of the B. & M. R. R. land commissioners and price-lists of the B. & M. R. R. lands to the

board of equalization. The board knowing the charges set forth in the affidavit of A. E. Touzalin, land com'r of the B. & M. R. R. lands in Boone county to be false and a tissue of misrepresentation as *it* regards discriminating against the B. &. M. R. R. Co. in assessments of their lands, therefore be it resolved that we see no reason in justice and equity to conform their assessment to the requirements of said company. * * *

On motion, the amount of tax on $122.00 was refunded to M. B. Boardman on the assessment of the year 1874.

On motion, adjourned to meet April 18th, 9 o'clock a. m.

EDWIN BROADBENT, *Chairman.*

Attest: JOHN PETERS,
County Clerk.

EXHIBIT " H."

Commissioners' Record, Eightieth Session, April 18, 1876.

Board met pursuant to adjournment, as board of equalization.

99 Present: Commissioners Broadbent, Maricle, and Wilkinson.

On examination of the assessors' returns of real estate, the board ordered the assessment on real estate of Shell Creek precinct reduced 25 per cent., and the assessment on certain tracts of land in Cedar precinct raised, and the town lots of the town of Albion, the county seat, raised to $10.00 per lot. The assessment of Sackett and Crouche's mill was raised to $4,000.00. * * *

On motion, adjourned to meet April 19th, at 9 o'clock a. m.

EDWIN BROADBENT, *Chairman.*

Attest: JOHN PETERS,
County Clerk.

Commissioners' Record, Eighty-first Session, April 19th, 1876.

Board met pursuant to adjournment, as board of equalization.
Present: Commissioners Broadbent, Maricle, and Wilkinson.
A few changes *was* made on the assessment of personal property.

* * * * * * *

On motion, adjourned.

EDWIN BROADBENT, *Chairman.*

Attest: JOHN PETERS,
County Clerk.

I hereby certify the above and foregoing to be a true copy of the commissioners' proceedings as a board of equalization, year 1876, as appears on the records of Boone county, Nebr.

Witness my hand and official seal this 23rd day of July, A. D. 1884.

[SEAL.]

JOHN PETERS,
County Clerk, Boone Co., Nebr.

Endorsed: Filed Aug. 4, 1884. Elmer D. Frank, clerk.

"EXHIBIT I."

Commissioners' Record, Ninety-third Session, April 16th, 1877.

Board met in regular session, as a board of equalization.
Present: Commissioners Maricle, Wilkinson, and Broadbent.
Minutes of last meeting read and approved. * * *
One acre of trees was deducted from Joel Berry's assessment.
The land road tax was relinquished on town lots for 1876.
100 A few corrections *was* made on personal property.

Loran Clark, agent for the B. & M. R. R. Co., presented affidavit and price-list of said railroad land commissioner, on which the following action was taken with reference to the B. & M. R. R. Co.: Whereas the B. & M. R. R. Co. have again, by their agent for Boone county, Hon. Loran Clark, presented to the commissioners of Boone county, sitting as a board of equalization, a list of their lands, with cash prices attached, accompanied by the affidavit of A. E. Touzalin, Esq., land commissioner of said company, which said affidavit charges county and precinct officials with unjust and wholesale discrimination against said B. & M. R. R. Co. in the assessment of their lands in Boone county:

Therefore resolved, 1st, that we, as commissioners of Boone Co., Nebr., repel the charges as false and a base slander upon the officers and actions of the officials of Boone county; resolved, 2nd, that whilst the B. & M. R. R. Co. persistently refuse to pay the legally assessed taxes upon their lands lying within the limits of Boone county and propose to continue such refusal in the face of court decisions and a perfect title to their lands, anything coming from said company through its agents comes with an exceedingly bad grace and deserves only the contempt of this board and of the honest taxpayers of this county; resolved, 3rd, that the line of action pursued by the B. & M. R. R. Co. in repudiating its taxes has done more to cripple Boone county and retard her development than all other causes combined.

All town lots assessed in the town of Albion at $2.00 per lot *was* raised to $3.00 per lot. * * *

On motion, adjourned to meet April 17th, at 9 o'clock a. m.

HARVEY MARICLE, *Chairman.*

Attest: JOHN PETERS,
County Clerk.

Board met pursuant to adjournment, as a board of equalization.
Present: Commissioners Maricle, Wilkinson, and Broadbent.

101 On motion, the following was adopted, in the matter of remitting the county and school tax of Sackett and Crouch on their mill property for the year 1876: Whereas it has come to the knowledge of the county commissioners that they have no right to release any property from taxation under the new constitution, therefore be it resolved that the order releasing Sackett and Crouch

from taxes for the year 1876 be rescinded and the treasurer be instructed to collect all taxes on the same.

E. Powell presented petition, signed by 140 tax-payers, asking to be released from taxes on his mill property for the year 1877. The board not having authority to release any property from taxation, the petition was rejected.

Two horses and one wagon was added to the assessment of R. Cummings. The assessment on section 25, township 18, range 7, was reduced to 75 cts. per acre.

All unimproved real estate that was assessed at $4.00 per acre was reduced to $3.00 per acre. * * *

On motion, adjourned to meet April 18th, at 9 o'clock a. m.

HARVEY MARICLE, *Chairman.*

Attest: JOHN PETERS,
County Clerk.

Commissioners' Record, Ninety-fifth Session, April 18th, 1877.

Board met pursuant to adjournment, as a board of equalization. Present: Commissioners Maricle, Wilkinson, and Broadbent.

Mrs. H. Kinzley's real estate was reduced to $3.50 per acre; Sackett and Crouch's lands reduced to $3.00 per acre; John Hare reduced to $2.00 per acre; N. G. Myers reduced to $3.00 per acre; Sackett and Crouch's mill property was assessed at $4,500.00, and E. Powell's mill property was placed at $3,000.00. After due deliberation the board was satisfied that an error existed in the assessment of Sackett and Crouch mill property for the year 1876, and, on motion, the same was placed at $3,000.00.

On motion, adjourned to meet April 20th, at 9 o'clock a. m.

HARVEY MARICLE, *Chairman.*

102 Attest: JOHN PETERS,
County Clerk.

I hereby certify that the above and foregoing is a true copy of the commissioners' proceedings as a board of equalization, year 1877, on the records of Boone county, Nebr.

Witness my hand and official seal this 23rd day of July, A. D. 1884.

[SEAL.] JOHN PETERS,
County Clerk.

Filed Aug. 4, 1884.

ELMER D. FRANK, *Clerk.*

At a session of the circuit court of the United States for the district of Nebraska continued and held, pursuant to adjournment, at the United States court-room, in the city of Omaha, on the eighth day of March, 1884, the Honorable Elmer S. Dundy, judge, being present and presiding in said court, the following, among other, proceedings were had and done, to wit:

H. H. HUNNEWELL
vs.
BOARD OF COUNTY COMMISSIONERS OF BOONE COUNTY *et al.* } 210, D.

And now comes as well the said plaintiff, by its attorney, as the said defendants, by their attorneys, and thereupon this action comes on for trial before the court upon the issues joined between the parties; on consideration whereof the court do find the issue in favor of the plaintiff, and do find that the taxes set forth in the said petition of plaintiff are void, as in said petition the said plaintiff has alleged.

It is therefore ordered and adjudged that an injunction be, and the same is hereby, allowed, as prayed for in said petition of plaintiff, and that the same is hereby made perpetual, and that the said defendants, The County Commissioners and The Treasurer of said County, or their successors are hereby perpetually enjoined from collecting or in any way attempting to collect or in any way intermeddling with the taxes set forth in the said petition, and that the successors in office of the said defendants be, and the same are hereby, perpetually enjoined from collecting or in way intermeddling with said taxes.

103 And it is further considered that the said plaintiff recover against the said defendants its costs in and about this suit in this behalf expended, taxed to be — dollars.

(Signed) ELMER S. DUNDY, *Judge.*

EXHIBIT "K."

THE UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the above and foregoing is a true copy of an order entered upon the journal of the proceedings of said court in the cause therein entitled; that I have compared the same with the original entry of said order and it is a true transcript therefrom and of the whole thereof.

Witness my official signature and the seal of said court, at Omaha, in said district, this 28th day of July, A. D. 1884.

[SEAL.] ELMER D. FRANK, *Clerk.*

Endorsed: No. 210, doc. D. United States circuit court, district of Nebraska. H. H. Hunnewell *vs.* B'd Co. Commissioners of Boone Co. *et al.* Copy of order of court. Ex. K. Filed Aug. 4, 1884. Elmer D. Frank, clerk.

In the Circuit Court of the United States for the District of Nebraska.

THE COUNTY OF BOONE
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA and H. H. HUNNEWELL. } 30, H

In accordance with the order of the court and the stipulation made and entered into between the above-named parties, by their attorneys, I, C. P. Drennen, special examiner in chancery of the above-named court, commencing on the 8th day of July, 1884, took the testimony on the part and behalf of the complainant in said cause, which testimony I have reduced to writing, as in the depositions following, each of the several witnesses, to wit,

104 S. H. Bollman, S. P. Bollman, Edwin Broadbent, Thomas Thompson Wilkinson, John Peters, Thomas H. Bowman, and Elmer D. Frank, before testifying, being by me duly sworn to testify the truth, the whole truth, and nothing but the truth touching such matters in the cause as were of them inquired, the counsel for the parties, to wit, J. S. Miller, Esq., for the complainant, and T. M. Marquett, Esq., for the respondents, appearing and examining the witnesses; and said counsel agree and consent that the signatures to the said depositions shall be waived, and that the place of taking this testimony shall be changed from the office of the county clerk of said county to the office of Miller and Price, att'ys, in the town of Albion, in said county; and the said S. H. BOLLMAN being about the age of 35 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said S. H. Bollman, and he did thereupon depose, testify, and say as follows, viz:

Int. 1. State your name.

Ans. 1. S. H. Bollman.

Int. 2. Where do you reside and what office do you hold?

Ans. 2. My residence is Albion, Nebraska, and I am county treasurer of this county.

Int. 3. State if as county treasurer you have the custody of the tax list of the county for the years 1873 to 1877, inclusive.

Ans. 3. I have.

Int. 4. State if the tax lists referred to are present. Are those the books? (Witness examines books.)

Ans. 4. Yes, sir; these are the books.

Int. 5. During what years?

Ans. 5. From 1873 to 1877, inclusive.

Mr. MILLER: We offer in evidence the tax lists of Boone county for the years 1873, 1874, 1875, 1876, and 1877.

Mr. MARQUETT: We object, because it is irrelevant, immaterial, and incompetent.

105 And also the said S. P. BOLLMAN, being about the age of 50 years, and having been by me first cautioned and sworn

to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said S. P. Bollman, and he did thereupon, depose, testify, and say as follows, viz:

Int. 1. State your name.

Ans. 1. S. P. Bollman.

Int. 2. Where do you reside?

Ans. 2. At Albion, Nebraska, Boone county.

Int. 3. State, Mr. Bollman, what office, if any, you held during the years 1873 to 1877, inclusive.

Ans. 3. I was treasurer of Boone county, Nebraska.

Int. 4. State if as treasurer of Boone county for the years mentioned you had charge of and custody of the tax list for these years.

Ans. 4. Yes, sir; I had, as the years transpired; the lists were in my possession as they were made and came into requisition from year to year.

Int. 5. State if it was your duty as county treasurer to collect the taxes during those years.

Ans. 5. Yes, sir.

Int. 6. The taxes were payable to you, were they?

Ans. 6. Yes, sir.

Int. 7. Mr. Bollman, state whether or not during any of those years mentioned the B. and M. Railroad Company ever paid or offered to pay any taxes on the lands assessed to them in Boone county.

Objected to by defendants' attorney as irrelevant and incompetent.

Ans. 7. As bearing upon that the company—I don't remember the year particularly now, but it was along, perhaps had relation to the taxes of 1873—the company sent sheets and requested the extension of their taxes on those sheets, and I think they were brought to me and left in my possession by an agent of the company.
106 I think that was the way, and I extended and sent to the company, by their direction, at a certain time, these extensions; but there never were any taxes paid on those years, according to my recollection, and there never seemed to be any arrangements made for payment except by filling out these sheets. Every year they have made out these sheets and forwarded — to us or brought them in person. They always prepared the lists, and sometimes they informed us or sent the lists there prepared, but no taxes was ever paid.

Int. 8. Did anybody ever tender you any portion of the taxes for those years, from 1873 to 1877, inclusive?

Ans. 8. No, sir; I think not. I have no recollection of any formal tender of money or any special amount in payment of those taxes, in part or in whole. I think there never was any such tender made to me personally.

Int. 9. Now, Mr. Bollman, you may state whether or not you ever

made any effort with the railroad company directly or ever visited them at their office in reference to the taxes for those years; and, if so, state when and what was done.

Objected to by def'ts' att'y as irrelevant and immaterial.

Ans. 9. I don't know that I could recall exactly the year, though it was quite an important circumstance that transpired. At the time of its transpiring some three or four years had passed, when these taxes were delinquent and unpaid. The commissioners consulted together and concluded that they would try to obtain some of the taxes by compromise from the company. They authorized me to go down to Lincoln and confer with the railroad company, the land commissioner, and attorney of the company in relation to it, proposing to take at that time ten thousand dollars in full of all the taxes that had been assessed previous, and I think at that time that was perhaps one-third of the taxes that had been assessed up to that time—something like that, I think. I have never made any note of it. I would not be certain, but think it was about in
107 that neighborhood. When I went to Lincoln I had some conference with the officials, and they gave me to understand soon after we began to talk about the matter that they could not entertain a proposition of that kind—that is, they would not think of paying the proportion that was demanded; it was ten thousand dollars that was demanded, and intimated to me—I don't know whether it was Mr. Touzalin or Mr. Marquett who is here present—but there they or some of them intimated to me that if the county had asked four or five thousand they would have been willing to take the matter into consideration or would have given it some consideration—something of that kind. That is about as near as I can recollect the matter; and we had some little conference after that was made; but, as we could not telegraph from home here, after some delay the matter was given up and our conference in relation to it ended without any definite proposition or understanding in relation to it, and I returned home. That was the end of that matter, practically.

Int. 10. Now, Mr. Bollman, give as near as you can the language of the officials of the B. & M. Company with whom you conversed and the objections they raised to paying these taxes.

Objected to by defendants' att'y as irrelevant, incompetent, and immaterial.

Ans. 10. According to the best of my recollection, the land road tax was objected to as being wholly or entirely illegal, and also quite a proportion of the district school taxes, or the school taxes that were levied were regarded as illegal because of non-observance of legal requisitions and particulars in reference to the levy or assessment of these taxes, the voting of them, and the arrangements in the districts. A great many of the legal requirements were not met or only partly met, at the least. I think the company regarded them in general as not being a legal compliance with the law in such cases made and provided.

Int. 11. Now, Mr. Bollman, take this book, the tax list of 1873. I will call your attention, Mr. Bollman, to this writing in the
108 margin on all the pages where the B. & M. lands appear. It is, "Eradicated by the decree of tho U. S. district court March, 1878." I will call your attention to that writing on the margin of each page. Now, Mr. Bollman, state, if you know, who did that writing and when it was done and under what circumstances that endorsement was put there. State fully.

Objected to by def'ts' att'y as irrelevant, incompetent.

Ans. 11. I could not name the gentleman who did this. As to the time, it was some time after the action of the court in Omaha, and my recollection of it is that some gentleman came here and wished to see the tax lists and inquired of me and I brought them out, and he made these entries right opposite the lands—talked something to me about the propriety of having them entered, and entered them in his own hands. The handwriting is not mine nor anybody's that was a resident of the office. His action in making these indorsements in the tax lists seemed to be based upon the fact that the court had so decreed, and that it was right and proper to be done so. That is about all I remember concerning it.

Int. 12. Did the man who made these entries represent himself to be in any way the agent of the B. & M. Railroad Company?

Ans. 12. I do not remember, Major, as to what was said in reference to that matter. My impression was that he was acting in the interests of that company, but I don't remember any expression. Certainly that was the impression I had.

Int. 13. Mr. Bollman, you state that when you went to Lincoln you consulted with certain officers of the railroad company in reference to these taxes. Can you mention who they were?

Ans. 13. Mr. Touzalin, I know, was one, and Mr. Marquett, who is here present, was another, and, I think, Mr. McFarland also. I think Mr. McFarland was in the office then. I don't remem-
109 ber any other definitely. These were what we considered the proper sources to get at what was contemplated. These three gentlemen were all I remember seeing and of being mixed up in the conferences we had.

Int. 14. Were you county treasurer of Boone county at the time that endorsement was made on the books?

Ans. 14. Yes, sir.

Int. 15. Was that endorsement made on the tax list of each year from 1873 to 1877, inclusive, of all lands of the B. & M. Railroad Company?

Ans. 15. It was the same endorsement.

Int. 16. Made by the same party?

Ans. 16. I think so. I think it is in the same hand and by the same party. I brought the books out to him as he called for them, and he turned through and made the entries or endorsements opposite all lands that were taxed in the name of the B. & M. Railroad Company.

Int. 17. Did you ever make any proposition or overture to the B.

& M. Railroad Company concerning the taxes for those years other than as you have testified to?

Ans. 17. I think not. I have no recollection of ever doing so. I certainly could not have had any authority to do so unless it had been delegated to me in some way.

Cross-examination by Mr. MARQUETT:

Int. 1. Mr. Bollman, do you recollect—you say that you went to Lincoln authorized to settle the taxes from 1873 up to 1877, inclusive. Do you recollect the date of the time that you went to Lincoln to see Mr. Touzalin and myself and others?

Ans. 1. I do not, Mr. Marquett, definitely. I think it was probably in 1875 or 1876. I think some two or three years had——

Int. 2. Wasn't it in 1878? You could not have went there to have settled the taxes of 1877 in 1876, could you?

110 Ans. 2. No, sir; but I don't think that as much time as that had elapsed, Mr. Marquett, before this proposition was made.

Int. 3. You are not certain, then, what year it was?

Ans. 3. No, sir, I am not; but I feel quite certain in my own mind that there must a year or two have elapsed before the final consummation of the settlement through the commissioners themselves.

Int. 4. It might have been, then, as late as 1877 that you were to see us?

Ans. 4. I would not say positively that it was that late, but I am inclined to think it wasn't later than 1876. I don't know but the records might divulge the exact date—that is, of the commissioners.

Int. 5. At that time didn't I make an objection to the taxes that there was a suit pending against us in the United States circuit court to set aside our titles to the land in Boone county?

Ans. 5. Yes; you did.

Int. 6. I stated to you at that time that I didn't know whether we had any title to the lands that the suit was pending to set aside the titles of?

Ans. 6. Yes; I remember that you did make that objection and just about in the language that was stated.

Int. 7. As a matter of fact, don't you know yourself that there was a suit pending in the United States court, brought by the United States, to set aside our titles to the land in this county?

Objected to by pl'ff's att'ys as immaterial.

Ans. 7. I believe there was in the public papers or journals something to that effect—that is, it is not a matter that I had specially attended to, but I believe that is the case.

Int. 8. Mr. Bollman, you made no objections to this record that you spoke of as being by this party in the books in reference to the cancellation of these taxes?

Ans. 8. No, sir; I did not. I supposed, the shape the mat-

111 ter stood, that it was proper, and that this would be a kind of protection to the treasurer, in connection with the injunction, etc.

Redirect examination by Mr. MILLER:

Int. 1. Mr. Bollman, you stated in your cross-examination that you thought it was in 1876 that you went to Lincoln and had this conference with the officials of the B. & M. road. Now state whether or not that conference was had with reference to the taxes that had then accrued and not included the taxes of 1877.

Ans. 1. My impression is, Major, that it had only reference to the time that was past, and that if we had come to terms it would only have settled the matter for the years past—that is, all that were on the tax books preceding that time—and that we would have started out on a new base if we had closed negotiations then.

S. H. BOLLMAN, recalled, testified as follows:

By Mr. MILLER:

Int. 1. Mr. Bollman, I believe you stated in your first examination that you was treasurer of Boone county at that time?

Ans. 1. Yes, sir.

Int. 2. State, if you know or have any means of knowing, the amount of bonded indebtedness of Boone county in March, 1878.

Ans. 2. Yes, sir.

Int. 3. State what it was at that time.

Objected to by defendants' attorney as irrelevant, incompetent, and immaterial.

Ans. 3. You mean by that the indebtedness of the county?

Int. 4. Yes, sir.

Ans. 4. By the records thirty-seven thousand five hundred dollars.

Int. 5. What was the bonded indebtedness of the various school districts of Boone county at that time?

Objected to as irrelevant, incompetent, and immaterial.

Ans. 5. Six thousand seven hundred dollars.

Int. 6. What was the bonded indebtedness of Boone county in June, 1883?

112 Objected to as irrelevant, incompetent, and immaterial.

Ans. 6. About ninety thousand dollars; that is just approximating. It may be a trifle less or a little more, but that is nearly the result of the bonded indebtedness of the county.

Int. 7. What was the bonded indebtedness of the various school districts of the county in June, 1883?

Objected to as irrelevant, incompetent, and immaterial.

Ans. 7. I can't tell you exactly. I can approximate to that; about seven thousand dollars.

Int. 8. Has any of the tax upon the lands of the B. & M. Railroad Company for the years 1873 to 1877, inclusive, ever been paid to you since you have held the office of county treasurer of Boone county?

Ans. 8. No, sir.

Int. 9. Have any of them ever been tendered to you for those years?

Ans. 9. No, sir.

Adjourned by agreement and consent of the attorneys for the parties till 2 o'clock p. m., then to be continued at the same place.

Pursuant to adjournment, as above stated, on the same day, viz., July 8th, 1884, at the hour of 2 o'clock p. m., I resumed the taking of said depositions as follows, viz., J. S. Miller, Esq., appearing for plaintiff and T. M. Marquett, Esq., for defendant. Not being able to complete the taking of said depositions by reason of the fact that certain witnesses are not present, I adjourn the further taking of the same till July 9th, 1884, at the hour of 9 o'clock in the forenoon, then to be continued at the same place.

C. P. DRENNEN,
Special Examiner.

Pursuant to adjournment, as above stated, on the 9th day of July, 1884, at the hour of 9 o'clock in the forenoon, at the same place, J. S. Miller, Esq., and T. M. Marquett, Esq., being present for the parties respectively, I resumed the taking of said depositions as follows, viz:

113 S. H. BOLLMAN, recalled, testified as follows:

Cross-examination by Mr. MARQUETT:

Int. 1. You spoke of the bonded indebtedness of Boone county. What was the nature of that indebtedness and under what act, if any, were the bonds issued that made up the indebtedness in March, 1878?

Ans. 1. This bonded indebtedness contracted prior to March, 1878, that was the county warrants or orders that they had out and were not able to pay, and those bonds were called funding bonds and were issued under a special act of the Legislature of the State of Nebraska to enable the counties of Platte, Greely, Boone, Colfax, Sherman, and others to fund their indebtedness.

Int. 2. Now, what did the indebtedness consist of, the bonded indebtedness that was spoken of as being against Boone county in June, 1883?

Ans. 2. In June, 1883, her bonded indebtedness would be ninety thousand five hundred dollars.

Int. 3. But what did it consist of—in what kind of bonds?

Ans. 3. It consisted of about thirty-seven thousand five hundred dollars of those bonds spoken of as being issued under this special act of the Legislature to enable those counties to fund their debt.

Int. 4. And what else?

Ans. 4. Twenty thousand dollars, I think, of seven per cent. bonds of the same nature in 1880. I think it is 1880; would not be sure as to that, and thirty-three thousand dollars in railroad bonds at eight per cent., bonds to enable us to get the branch of the U. P. road into this county.

Redirect examination by Mr. MILLER:

Int. 1. These funding bonds were issued to pay the outstanding indebtedness that had accrued against the county during the years from 1873 up to the time of the issuing of the bonds, was it not?

Objected to as not being redirect examination and as calling for the opinion of the witness and not for facts.

114 Ans. 1. Yes, sir; at least the greater portion of it.

Recross-examination by Mr. MARQUETT:

Int. 1. How do you know this?

Ans. 1. The bonds were issued in 1876.

Int. 2. Yes; but how do you know? Did you have anything to do with the issuing of the bonds?

Ans. 2. No, sir.

Int. 3. You were in no public office at that time?

Ans. 3. I was not.

Int. 4. How do you know, then, it was issued to fund the warrants? Do you know of your own knowledge? Have you any knowledge yourself?

Ans. 4. Not of the transactions; I have not now.

Int. 5. You don't know how many outstanding warrants there were at that time?

Ans. 5. I do not.

Int. 6. You simply know that it was claimed that these were issued to take up warrants?

Ans. 6. Yes, sir.

Int. 7. And as to how many outstanding warrants or how many were taken up you don't know anything about them?

Ans. 7. No, sir; I don't know exactly how many were out nor how many were taken up.

And also the said EDWIN BROADBENT, being about the age of 50 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Edwin Broadbent, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MILLER:

Int. 1. State your full name, Mr. Broadbent.

Ans. 1. Edwin Broadbent.

Int. 2. Mr. Broadbent, state where you reside.

115 Ans. 2. I reside now near Cedar Rapids, Boone county, Nebraska.

Int. 3. Where did you reside during the years 1877 and 1878?

Ans. 3. I resided about three miles up the river from where Cedar Rapids now is, in this county.

Int. 4. State what office you held during the years 1877 and 1878.

Ans. 4. I was county commissioner of this county.

Int. 5. Up to what time or what year were you county commis-

sioner? When did your office commence and when expire as county commissioner?

Ans. 5. I don't know as I can do it, not having my mind charged with it particularly.

Int. 6. Didn't you take the office in January, 1877?

Ans. 6. I think I was county commissioner before that time. I think that was my second term, probably.

Int. 7. Second term or second year?

Ans. 7. Second term. I served two terms. That was probably my second term.

Int. 8. It commenced on the first day of January, 1877, did it not?

Ans. 8. Yes; I think it was. That would be my second term.

Int. 9. Then when did it expire?

Ans. 9. In 1879 or 1880.

Int. 10. It would be the first of January, 1880, wouldn't it?

Ans. 10. Yes; the 1st of January, but the fall of 1879 it would be.

Int. 11. That is, that you would hold the office until the 1st of January, 1880?

Ans. 11. Yes; that would be right.

Int. 12. Now, Mr. Broadbent, state if, while you were county commissioner during the years 1877 and 1878 you took any part in the efforts made by the county commissioners to collect the taxes due the county from the B. & M. Railroad Company; and, if so, state what you did.

Objected to as being irrelevant and incompetent.

116 Ans. I don't think I took any part in trying to collect the taxes.

Int. 13. Mr. Broadbent, were you acquainted with a man by the name of Adam Smith during any of those years?

Ans. 13. Yes, sir.

Int. 14. Now state, Mr. Broadbent, if you had any transaction with Mr. Smith relative to the taxes on the B. & M. lands in this county for the years 1873 to 1877, inclusive; and, if so, state what it was and when you first became acquainted with him and the circumstances. Go on and relate all the facts just as they occurred.

Objected to as being irrelevant and incompetent and as hearsay.

Ans. 14. Well, Adam Smith came here, and he said that he wished, as an individual, to buy one hundred thousand acres of land at that time belonging to the B. & M. Railroad Company in Boone county, and he said that he would not touch the lands unless the taxes could be removed, and he asked us, as county commissioners, if we would rebate the taxes that were then on the lands, and I, for my part, told him that we could not do any such thing. While I am well aware of that, said he, will you submit it to the court and allow the court to remove? Yes, said I, I am willing for the court to decide.

Int. 15. Was that the first conversation that you had with Mr. Smith with regard to those taxes?

Ans. 15. No, sir; prior to that I met him on the prairie, and he told me his business just as I have stated it, and I asked him, says I, Do you in any manner represent the railroad company? Says he, No. Says he, I came here as an individual to buy this land just the same as yourself or any other individual. That was the first conversation had.

Mr. MARQUETT: I object to the answer as incompetent.

Int. 16. Mr. Broadbent, state as near as you can what time and where in the county you had this conversation?

Ans. 16. I could not state the time; I could state the place.

117 Int. 17. Well, you can state in what year or what part of the year, can't you?

Ans. 17. Not positively; I could not. I haven't charged my mind with anything of the kind, and I have no memorandum of it, and can't remember.

Int. 18. Well, state the place.

Ans. 18. The place was between Dayton and Mr. Files' house, on Mr. Files' place near Dayton.

Int. 19. Now, Mr. Broadbent, state how that conversation commenced and what was said and done. Give as near as you can the language and what he asked you to do.

Objected to as being incompetent.

Ans. 19. Well, I have already stated about all the conversation, with the exception of what you speak of now. He asked me if I would come over here to see something about a settlement with regard to the taxes on the B. & M. Railroad Company's lands——

Mr. MARQUETT: Come over where?

WITNESS: To the county-seat, as a county commissioner and then this conversation followed, as I have already stated.

Int. 20. Well, did you come over here?

Ans. 20. Yes, sir; I did.

Int. 21. Now, state, Mr. Broadbent, what took place here at the county-seat between the board of county commissioners and Mr. Smith relative to these taxes—what was said and done.

Objected to as irrelevant and incompetent.

Ans. 21. Well, we met here in the court-house, and I think at that time he produced a letter of introduction from the Central Railroad Company of Illinois——

Mr. MARQUETT: I object to his stating any of the contents of the letter as being incompetent.

WITNESS: I was going to say that Mr. Smith was recommended to us as being an honorable business man.

Int. 22. Was that in the letter?

Ans. 22. Yes, sir; it was in the letter, and that he had
118 bought a large amount of land from that company—that is, the Central Illinois Company—and that he had improved it and had sold out the lands and everything, and then he went on to talk about the tax here. He asked us if we would be willing to remit the taxes on the B. & M. lands in this county, and I told him that it would be contrary to the law, even if we were willing to do it; and he said, Are you willing to submit it to the court? And I said, Yes; we are willing to submit it to the court and let the court decide. Then there was an agreement drawn up between the county commissioners and Mr. Adam Smith about to that effect.

Mr. MARQUETT: A written agreement?

WITNESS: Yes, sir; a written agreement. It was left in the hands of the county clerk.

Mr. MARQUETT: "I now move to strike out all the evidence given by this witness in reference to any and all conversations with Adam Smith, for the reason it appears that there was a written contract embodying the contract between them."

Mr. MILLER:

Int. 23. Now, Mr. Broadbent, go on and state, as near as you can, what else transpired there.

Ans. 23. I don't remember anything else.

Int. 24. Was that all that was done?

Ans. 24. That is all that I remember now.

Int. 25. Is what you have stated as being the contract between the commissioners and Mr. Smith the substance of that contract?

Objected to as being incompetent and hearsay.

Ans. 25. I have in substance answered that question.

Int. 26. What became of that contract?

Ans. 26. I don't know. It was in the court-house the last I saw it, and I don't know.

Int. 27. Was it on file?

Ans. 27. I don't know anything about that.

Int. 28. Was it delivered to the county clerk to be kept?

Ans. 28. It was in his hands, I believe.

119 Int. 29. Did you ever see it afterwards?

Ans. 29. I don't remember that I did.

Int. 30. Did you ever read it after that?

Ans. 30. I don't remember that I did.

Int. 31. Who was present, Mr. Broadbent, at this meeting?

Ans. 31. The meeting you have spoken of?

Int. 32. Yes.

Ans. 32. There was Mr. Adam Smith and me, and Mr. Harvey Maricle and Loren Clarke were some of them. Mr. Bollman, the county treasurer, was in the room, I think, and Mr. Peters and some others that I could not name now; there was quite a number there. Mr. Doc. Lewis, I believe, was there.

Int. 33. Was Mr. Maricle one of the commissioners?

Ans. 33. Yes, sir; he was.

Int. 34. When did you meet with Mr. Smith on the question of these taxes?

Ans. 34. I could not tell.

Int. 35. Did you have any other meetings in reference to the matter?

Ans. 35. Yes, sir.

Int. 36. Where were they?

Ans. 36. I don't really know how to answer you. We sometimes would meet Mr. Smith here at the court-house to talk over some things, and at one time we was talking over the matter and we spoke of ratifying this—probably what you have reference to. He wanted to ratify this contract that was made at the time spoken of.

Int. 37. When was that?

Ans. 37. I can't give any dates.

Int. 38. During what year?

Ans. 38. It was probably 1878.

Int. 39. During 1878?

Ans. 39. I think like enough it was.

Int. 40. Was it before or after you went to Lincoln?

Ans. 40. It was before we went to Lincoln.

120 Int. 41. What did you do at that time?

Ans. 41. I was going to say that I said for my part I should like to have counsel with regard to it before we ratified it—in the court-house that conversation was—and they said that was all right and proposed that we should go somewheres to get counsel and ratify this contract, and it was finally agreed to go to Lincoln and get counsel and ratify the contract.

Int. 42. Who first proposed to go to Lincoln?

Ans. 42. I could not tell you. I don't remember.

Int. 43. Mr. Broadbent, go on and give the language of yourself and Mr. Smith at that time as near as you can.

Objected to as being incompetent.

Int. 44. Give it as near as you can, as you did last Saturday at your house.

Objected to for the reason that the witness was not under oath last Saturday and as incompetent.

Int. 45. Detail the conversation in detail, as you did to me.

Objected to as being incompetent.

Ans. 45. Well, I have already told it—that is, I would have to repeat it over again.

Int. 46. Well, go on as you have just started in.

Ans. 46. I said that I wanted counsel, and I proposed to go to Fremont or some other town where we could get an attorney that was disinterested in the case and that would be our attorney, so that neither us nor the county would do anything but what was legal and right, and that was the object that I had in this suggestion.

Int. 47. I believe you didn't state who suggested going to Lincoln?

Ans. 47. I said I didn't know. It was suggested by some one, but I didn't notice——

Int. 48. Who was present at this meeting?

Ans. 48. I think, if I remember right, Mr. Bollman and
121 Mr. Wilkinson and myself and Mr. Adam Smith and John Peters.

Int. 49. What next transpired in the negotiations for settlement of this tax business? Go on and give it in detail in your own language.

Ans. 49. There was nothing more done until we got to Lincoln in regard to it.

Int. 50. You went to Lincoln, did you?

Ans. 50. We made arrangements to go to Lincoln and we went on a certain day in regard to it.

Int. 51. What did you do when you got to Lincoln?

Objected to as being irrelevant and incompetent.

Ans. 51. When we got to Lincoln we inquired for an attorney to act for Boone county.

Int. 52. Where did you go in Lincoln—to what office?

Ans. 52. Went to the B. & M. Railroad Company's office.

Int. 53. Did you make the inquiry there for the attorney?

Ans. 53. Yes; we talked to some individuals there.

Int. 54. Now, then, what was said to you there by the individuals of whom you inquired?

Objected to as being incompetent and hearsay.

Ans. 54. They recommended Mr. Sessions as being a suitable man for the business.

Int. 55. Did they recommend anybody else?

Ans. 55. No, sir.

Int. 56. Well, what did you do then?

Ans. 56. We had him sent for.

Int. 57. Had him sent for?

Ans. 57. Yes, sir.

Int. 58. Just go on and state whether he came and where he came.

Ans. 58. He came to where we were.

Int. 59. In the railroad office?

Ans. 59. Yes, sir.

122 Int. 60. Now, Mr. Broadbent, state what was said to Mr. Sessions at that time and give his answer. Repeat the conversation, as near as you can, that you had with Mr. Sessions with reference to this matter.

Objected to as being hearsay and being incompetent and irrelevant.

Ans. 60. I asked Mr. Sessions what we could do with regard to the collection of the taxes on the B. & M. Railroad Company's lands in Boone county. His answer was that they wasn't worth that—(snapping his fingers).

Int. 61. Was that the first conversation that you had with Mr. Sessions about it?

Objected to as being incompetent.

Ans. 61. I believe it was.

Int. 62. Had you stated to Mr. Sessions any of the particulars relative to these taxes, what they were, how they were levied, or what had been done with regard to them before that?

Objected to as incompetent.

Ans. 62. No, sir; that was the first that I ever said to him.

Int. 63. Now, Mr. Broadbent, what next was said by either yourself or the commissioners? Who was there with you?

Objected to as being incompetent.

Ans. 63. Mr. Wilkinson and Mr. Bowman.

Int. 64. Who was Mr. Bowman?

Objected to as being incompetent.

Ans. 64. He was one of the commissioners—the one that took the place of Mr. Maricle.

Int. 65. Who else was there?

Objected to as being incompetent.

Ans. 65. Mr. Peters was at the place, but I would not be positive that he heard this conversation. Mr. Wilkinson and Mr.
123 Bowman were present when this conversation was going on.

Int. 66. Who did the talking at that time?

Objected to as being incompetent.

Ans. 66. It was me just at that time.

Int. 67. Who else was present there?

Objected to as being incompetent.

Ans. 67. I could not say that there was any one present at that time but Mr. Wilkinson, Mr. Bowman, and myself and Mr. Sessions. That is all that I remember now.

Int. 68. What conversation next occurred?

Objected to as being incompetent.

Ans. 68. I asked him what could be done with regard to that.

Int. 69. What was his answer? Go on now, Mr. Broadbent, and in your own language detail what was said and done there.

Objected to as being incompetent.

Ans. 69. He said there was no way that they could be disposed of, only to submit it to the court and let the court grant a perpetual injunction on all illegal taxes, and I told him that we was willing to submit it in that way and let the court decide it.

Int. 70. What was next said or done in reference to it?

Ans. 70. I don't remember anything further till they drawed up some writings to be presented to the court.

Int. 71. Who drew up those writings?

Ans. 71. I suppose that Mr. Sessions did. I didn't see them drawn up, as I remember. We depended on him to do it, and he presented them to us afterwards. I suppose that he done it.

Int. 72. Was it done right then and there—these papers drawn up?

Ans. 72. I think it was.

Int. 73. This was in the office of Mr. Touzalin, was it not?

Ans. 73. I believe it was. That is what I understood—that it was his office.

124 Int. 74. Now, state what those papers were—that is, what was the nature of them.

Objected to as being incompetent, the papers being the best evidence.

Int 75. Just give it in your own language and give what you was trying to accomplish and what you did accomplish there.

Objected to as being incompetent and as calling for the opinion of the witness as to what the writings contain.

Ans. 75. Well, if I might be allowed, I think I could give you my idea in a very few words with regard to this whole thing. My idea is, as I have already stated, we, as county commissioners, nor any other power less than the Legislature, had a right to remit any taxes that was legally levied, and that our object was to have removed anything that was not legal and could not be collected, so that the lands might be settled, and we could go on with improving the country. This was our main object and what we was trying to do. We didn't attempt to remove any taxes that was legal; we didn't claim that we had any right to, and we didn't attempt to do anything but what was right and legal, and as we understood the law.

Int. 76. Now, Mr. Broadbent, did you read the paper that was drawn up at that time?

Objected to as being irrelevant and incompetent and as leading.

Ans. 76. No, sir.

Int. 77. Was it read in your hearing?

Objected to as being irrelevant, incompetent, and leading.

Ans. 77. Yes.

Int. 78. How long, Mr. Broadbent, were you and the commissioners engaged in this conversation on and in the making of these writings before they were completed at that time?

Ans. 78. I could not tell just how long. It was all done that evening before we went to bed.

Int. 79. About what time did you arrive in the city of
125 Lincoln, as near as you remember?

Ans. 79. It was some time between noon and night, but I could not tell the time; I had no way of knowing the time. It was a long before dark and it was some time in the afternoon.

Int. 80. What time in the afternoon or evening did you complete this business?

Ans. 80. I can only approximate the time. It was probably nine o'clock, as near as I can tell—something near that time.

Int. 81. After the lighting of the lamps?

Ans. 81. Yes, sir.

Int. 82. Do you remember the month in which this occurred?

Ans. 82. I think it was in January.

Int. 83. 1878, was it?

Ans. 83. Yes, I think it was.

Int. 84. Now, Mr. Broadbent, was Mr. Smith in the room during the time of this interview with Mr. Sessions?

Ans. 84. I don't think he was.

Int. 85. Was he in there, Mr. Broadbent, when you completed this transaction?

Ans. 85. I don't remember that he was; don't remember whether he was or not; don't remember of seeing him there at the time.

Int. 86. Was he there before you commissioners and Mr. Sessions left the office of Mr. Touzalin?

Ans. 86. I don't remember seeing him there that evening after we commenced this conversation with Mr. Sessions—not in that room.

Int. 87. Did you see him anywhere else in company with Mr. Sessions that evening?

Ans. 87. I never saw him in company with Mr. Sessions that evening at all.

Int. 88. Did you see him in company with Mr. Sessions the next morning?

126 Ans. 88. No, sir.

Int. 89. Who paid Mr. Sessions for his services as attorney?

Ans. 89. I could not tell you.

Int. 90. Did you have any conversation with Mr. Smith at that time relative to the fees of Mr. Sessions?

Objected to as leading and as being irrelevant and incompetent.

Ans. 90. I think the next morning Mr. Smith told us that he would see that Mr. Sessions was paid; that the county need not pay that. I think that was next morning.

Int. 91. Did you have any conversation with Mr. Smith relative to the fees of the county commissioners and their expenses to Lincoln?

Ans. 91. Mr. Smith said he would pay that out of his own pocket, and he paid us.

Int. 92. Mr. Broadbent, have you ever seen the papers which you say were drawn up at this time in Mr. Touzelin's office since that time?

Ans. 92. No, sir; not that I remember.

Int. 93. Have you ever heard them read since that time?

Ans. 93. I might have heard them read in the court-house, but I could not——

Int. 94. Did you sign the papers that were drawn up there?

Ans. 94. Yes, sir.

Int. 95. Did all three of you sign them?

Ans. 95. I believe we did.

Int. 96. Did Mr. Peters sign them?

Ans. 96. I believe he did. I could not be positive about that, though.

Int. 97. How many papers were there, Mr. Broadbent, if you remember?

Ans. 97. I could not tell; don't remember any but the one.

Int. 98. You don't remember but one?

Ans. 98. No.

127 Int. 99. Who read the papers to you at that time?

Ans. 99. Don't remember that; they were read by some one, but don't remember who.

Int. 100. Don't remember who read them?

Ans. 100. No. sir.

Int. 101. Do you remember whether it was Mr. Sessions or Mr. Touzalin?

Ans. 101. I don't think it was Mr. Touzalin; I don't think Mr. Touzalin was there.

Int. 102. Now, Mr. Broadbent, did you ever have any further conversation with Mr. Sessions, or did any of the commissioners ever have any further conversation with Mr. Sessions in your presence, relative to the prosecution of any case or defending any case in connection with these taxes?

Objected to as being incompetent.

Ans. 102. No, sir.

Int. 103. Then all the conversation and all the contracts and all the stipulations and agreements that you ever made or signed in connection with this matter was done and signed that night in Mr. Touzalin's office?

Ans. 103. No, sir; afterwards the same business was brought up here in commissioner's meeting.

Int. 104. And that was ratifying the same thing, was it not?

Ans. 104. Yes, sir; that was ratifying the same thing.

Int. 105. That was the same transaction?

Ans. 105. Yes, sir.

Int. 106. You never made any other agreements or stipulations?

Ans. 106. No, sir.

Int. 107. Do you remember, Mr. Broadbent, how that paper was signed; whether it was signed, board of county commissioners, or just signed in your names, without any reference to your being commissioners, as individuals?

128 Ans. 107. I don't remember.

Int. 108. Mr. Broadbent, did you, in company with Mr. Sessions, or did the county commissioners as a board ever examine the tax list, the assessment-rolls, of those years, from 1873 to 1877, carefully and with a view to ascertain their legality or illegality?

Objected to as being irrelevant and incompetent.

Ans. 108. No; I think not.

Int. 109. Mr. Broadbent, did you see Mr. Smith or did Mr. Smith in your presence pay or offer to pay Mr. Sessions any fees?

Objected to as being incompetent and irrelevant and as leading.

Ans. 109. No.

Int. 110. Did the county commissioners, to your knowledge, ever pay Mr. Sessions anything for his services?

Ans. 110. No, sir.

Int 111. Was there ever any bill presented to the county commissioners claiming any fees for Mr. Sessions?

Ans. 111. No, sir.

Adjourned, by consent and agreement of the attorneys for the parties, till the hour of 1.30 o'clock in the afternoon, then to be continued at the same place.

C. P. DRENNEN,
Special Examiner.

Pursuant to adjournment, as above stated, on the same day, viz., July 9, 1884, at the hour of 1.30 o'clock in the afternoon, at the same place, J. S. Miller, Esq., and T. M. Marquett, Esq., appearing for the parties respectively, I resumed the taking of said depositions as follows, viz:

EDWIN BROADBENT, in continuance of his testimony, further deposes, testified, and said as follows, viz:

By Mr. MILLER:

Int. 112. Mr. Broadbent, have you stated the substance of all the conversation you had with Mr. Sessions at the time you spoke of, in the office of Mr. Touzalin?

Objected to as being incompetent.

129 Ans. 112. No; not entirely. There was one thing that occurred the time he read the paper to us. I didn't think it would be the right time to speak of it, but probably I had better speak of it now, when I think of it. When he came to the word illegal taxes he said, We must be careful to have this word read illegal taxes. I said, Yes; if there is a dollar that can be collected, says I, we will want it.

Int. 113. Mr. Broadbent, do you think you could remember the terms and conditions of the paper that you signed at that time if you should hear it read or read it?

Ans. 113. I think I could, most of it. I have a general idea of it. I could not give it every word, probably.

Int. 114. Take that contract, Mr. Broadbent, and see if that is the document that you signed or that you intended to sign.

Mr. MARQUETT: I object to the latter part of this question as calling for the opinion and intention of the witness and as incompetent.

Mr. MILLER: I want to call your attention; Mr. Broadbent, to the last three lines or four lines of that paper (handing witness a paper).

Ans. 114. No; this latter part of it I never remember hearing it read or seeing, nor I never signed anything of that kind.

Answer objected to as being incompetent.

Int. 115. Now, Mr. Broadbent, that is your signature there, is it?

(Witness here examines the paper handed him by Mr. Miller.)

Ans. 115. Yes, sir.

(The paper was here introduced in evidence and is hereto attached, marked "Exhibit B," and made part of this testimony.)

Int. 116. Now, Mr. Broadbent, calling your attention to this language of this paper: "And to enter into the necessary stipulation and to have decree of court entered up in the circuit court of the United States for the district of Nebraska eradicating the
130 whole of the taxes now charged against the lands of the first and third parties for the above years, all of said taxes having been examined and agreed upon as illegal." Now, I want to ask you, Mr. Broadbent, when you signed that paper did you know that that language was in the paper?

Objected to as being incompetent.

Ans. 116. No; I never knew it was there.

Int. 117. Now, then, Mr. Broadbent, if you had known that that writing that you signed contained that language just referred to would you have signed that stipulation?

Objected to as being incompetent and leading.

Ans. 117. No, sir; I would not.

Int. 118. Mr. Broadbent state the circumstances how you came to sign that stipulation with that language.

Objected to because the witness had been over it before.

Ans. 118. I placed perfect confidence in Mr. Sessions as our attorney, and when he called upon us to sign the papers we signed them. We supposed that he was a man that was honorable and right, and when he called upon us to sign the papers we signed the papers.

Int. 119. Then you signed the papers without reading them or looking at their contents?

Objected to as being incompetent and leading.

Ans. 119. Yes, sir.

Cross-examination by Mr. MARQUETT:

Int. 1. Mr. Broadbent, you state you had several conversations with Mr. Smith—that is, Adam Smith—and then you say you embodied the agreement you had with him in a written agreement—that is, the county commissioners of Boone county made a written agreement with Mr. Smith.

Ans. 1. Yes, sir.

131 Int. 2. And that agreement as made by you is a correct one, is it?

Ans. 2. It was intended to be; yes, sir.

Int. 3. Is this the agreement? Is that your signature? Look at that agreement.

(An agreement is here handed to witness, dated the 18th of July, 1877, by and between Harvey Maricle and Edwin Broadbent, county commissioners of Boone county, and Adam Smith, of Chicago, a copy of which is hereto attached, marked "Exhibit A.")

Ans. 3. Yes, sir; that is my signature.

Objected to as incompetent and immaterial, for the reason that the same is not made a matter of record and was never ratified by the action of the county commissioners.

Int. 4. Now, Mr. Broadbent, this contract, then, that I have shown you is the contract between the county commissioners of Boone county and Mr. Smith?

Ans. 4. I suppose so.

Int. 5. You had a written contract, didn't you, made between Mr. Smith and the county commissioners?

Ans. 5. Yes; it was a contract made between us, and it wasn't placed on record at that time; neither was it considered binding at that time, but was to be ratified at some future time.

Int. 6. Now, you went to Lincoln, and this other paper or papers that you refer to as drawn up at Lincoln was the mode by which you ratified this contract with Mr. Smith?

Objected to as being incompetent.

Ans. 6. That was the intention, but I claimed that they do not correspond with our first agreement. It don't agree with our first agreement.

Int. 7. Now, you claim that Mr. Sessions didn't do as you thought he was going to do, do you?

Ans. 7. I don't blame Mr. Sessions or anybody else, but I
132 claim that that writing was not in accordance with our intentions.

Int. 8. Mr. Sessions went on, didn't he, and had a decree of court entered—that is, the stipulation was carried out and a decree of court entered, was it not?

Objected to as being incompetent. Question withdrawn.

Int. 9. Do you think that the settlement with the company was a bad one for the county?

Objected to as being incompetent and immaterial and as calling for the opinion of the witness.

Ans. 9. No, sir; I do not.

Int. 10. Isn't it a fact that shortly after this agreement and the wiping out of these taxes by the court that the whole thing was ratified by a public meeting here, where all the public were invited to attend?

Objected to as incompetent, the record being the best evidence.

Ans. 10. I don't remember any such meeting.

Int. 11. There was no public meeting?

Ans. 11. Not that I remember. I don't know of any such; could not say there was not. I don't know.

Int. 12. What was the real consideration for this settlement that you first agreed to make with Mr. Smith? What was he to do in order to make this settlement—that you were to have the taxes wiped out?

Objected to as immaterial.

Ans. 12. He was to make a graded road from Albion to Silver Creek, and he was to get settlers on this land—to sell it out to actual settlers.

Int. 13. Where was that road to be built from?

Ans. 13. From Albion to Silver creek, on the U. P. railroad.

Int. 14. He went on and did his part of the contract, didn't he?

Objected to as being incompetent and immaterial.

133 Ans. 14. Yes, sir.

Int. 15. Mr. Broadbent, you intimated that Mr. Sessions, your attorney, didn't do right. Now, in what respect did he do wrong?

Ans. 15. He done wrong either in writing different from our intentions or allowing it to be wrote and presenting it to court.

Int. 16. Did he do anything wrong in presenting the matter to court that you know of?

Ans. 16. I don't know what he presented in court, but the papers that were represented to me as being presented to court were not according to my intentions, at least. I won't speak for anybody but myself in that case.

Int. 17. Your intention was to have Mr. Smith work out the legal taxes in building this road, and then to go on and collect them as if he hadn't worked them out. Was that your intention?

Objected to as being immaterial and not cross-examined.

Ans. 17. No, sir; it was not.

Int. 18. Was it your intention that you should collect all the legal taxes, and that he should do this work on top of that?

Objected to as being immaterial and not cross-examination.

Ans. 18. It was my intention that the taxes should be collected by law, and then that he should do as he pleased about this work. That was his business; it wasn't ours.

Int. 19. Now, when did you first find out that Mr. Sessions hadn't done just as you intended he should do, and when did you first speak about it?

Objected to as being immaterial.

Ans. 19. I never did find out. I have stated that, as it appears to me, from what I know about it; that is all. I never knew it was

presented in court. I say that if he presented that paper as it was represented to me that he had done—that he had presented—that that was not in accordance with our intentions.

134 Int. 20. And was not in accordance with the agreement of Smith?

Ans. 20. Yes; and was not in accordance with the agreement of Smith, as I understood it.

Int. 21. You knew that the decree had been entered cancelling all these taxes, and that they were cancelled here on the records, didn't you?

Ans. 21. I understood so. I didn't know it to my own knowledge.

Int. 22. You understood so at the time that the transaction was made?

Ans. 22. Yes, sir.

Int. 23. And you supposed it was all so?

Ans. 23. I supposed it was all so.

Int. 24. That was about the time that the decree was entered, I suppose, and those taxes cancelled here?

Ans. 24. Yes, sir.

Int. 25. In what year was that?

Ans. 25. I don't remember. I am not sure whether it was in 1878 or 1879; one of those two years.

Int. 26. It was in the year in which these pretended agreements were made, was it?

Ans. 26. I am not sure whether it was in that year or the next year. It was right along as soon as it could be brought about in court.

Int. 27. You have talked about the settlement of this matter of taxes with different persons since it happened?

Ans. 27. Yes, sir.

Int. 28. Talked with Mr. Touzalin, haven't you?

Ans. 28. I don't know whether I have or not.

Int. 29. Talked with Mr. Peters?

Ans. 29. Yes, sir; I suppose I have.

Int. 30. Talked with Mr. Cumings?

Ans. 30. Yes, sir; I suppose I have.

135 Int. 31. And talked with others in the county?

Ans. 31. I think like enough I have.

Int. 32. Have you, to any of these persons, intimated that Mr. Sessions hadn't done right?

Objected to as being incompetent and immaterial.

Ans. 32. I don't know that I have, for I don't know that he had. I don't know but what he has done everything all right.

Int. 33. Now, did you learn anything differently until you talked with Mr. Miller here?

Ans. 33. I understood it differently. I understood from different ones. I understood this had been brought into court in this shape, and I told them it was a lie.

Int. 34. When did you first speak to Mr. Brown and Mr. Files about Mr. Sessions' action?

Ans. 34. I could not tell you the time, but at the time that there was some feeling on the subject here in the county by the people and against the commissioners. They said that we as commissioners had said that all the taxes here—in the county here—were illegal.

Int. 35. Well, just give the time when you first spoke to them.

Ans. 35. I can't give you the time.

Int. 36. Well about the time—what year?

Ans. 36. I never expected to be called on in this matter at all. I am not at all prepared and I don't know.

Int. 37. Was it six months ago?

Ans. 37. Yes; more than a year ago, and probably more than two years ago, and probably more than three years ago.

Int. 38. Was it ten years ago?

Ans. 38. No; it might have been three years ago, and probably—I think it was.

Int. 39. Some people were condemning you and you were defending yourself—that is the way you got to talking about it?

136 Ans. 39. Yes, sir; that was the way of it.

Int. 40. You thought the best thing you could do was to shove the whole thing on Sessions?

Ans. 40. No, sir; it is no such thing. I didn't want to shove it on Sessions or anybody else.

Int. 41. Just say no, then.

Ans. 41. No; it wasn't. I simply told the truth.

Int. 42. Now, Mr. Broadbent, I will ask you this question: Haven't — said and acted upon the theory that this settlement was all right up till within a short time?

Objected to as being immaterial and incompetent.

Ans. 42. I considered it right in this way, that it had proved a good thing for the county and the best thing that I could conceive of.

Int. 43. Under all the circumstances?

Ans. 43. Yes.

Int. 44. You say that Mr. Smith, after the agreements were all made at Lincoln, the business all transacted, told you that he would pay Mr. Sessions and pay your expenses there and back. Was this after all the business was transacted?

Ans. 44. It was the next morning after those papers were drawn in Lincoln. He told us so in Lincoln, at the hotel, before we left.

Int. 45. Now, isn't this what was said, that you said that the county had no money, and that you thought, in addition, that he ought to pay the expenses?

Ans. 45. I don't think I did.

Int. 46. Well, didn't any of the commissioners say that?

Ans. 46. I couldn't tell you.

Int. 47. Did Mr. Smith say that since he had bought a large tract

of land he would be a large tax-payer, and that he would pay this?

137 Ans. 47. I don't remember any such language as that. He said that the county should be at no expenses on that trip; that he would pay our expenses and our *per diem* out of his own pocket and we needn't be at any expense about Mr. Sessions' fees; that he would see that they were paid.

Int. 48. Now, was there anything said about paying your fees or Mr. Sessions' until after the papers were all drawn up and signed and the agreement made?

Ans. 48. No, sir; not anything.

Int. 49. What efforts had the county commissioners made to collect these taxes prior to this time they made the agreement with Smith?

Ans. 49. The first thing they done after I came into office was we employed Briggs & Ambrose, of Omaha. The first thing that they did was to remove an injunction that was on our county treasurer, and they got that removed.

Int. 50. How long had you them hired?

Ans. 50. I could not tell you.

Int. 51. Did you hire any other attorneys after that?

Ans. 51. Not for that purpose; no, sir.

Int. 52. Did they collect any taxes for you?

Ans. 52. We never got any.

Int. 53. You were never able to collect any of these taxes, were you?

Ans. 53. No, sir.

Int. 54. Didn't you have Millet & Son, of Columbus, employed?

Ans. 54. I don't remember that we had them employed for that purpose. They may have been employed by others—commissioners. They were employed in a bridge case when I came into the office, but we never employed them for that purpose.

Int. 55. Now, these contracts at Lincoln, did not Mr. Peters

138 read them over to you there?

Ans. 55. I couldn't say. I don't remember who read them. I think that Mr. Sessions, as I have stated before, read a part of one paper, if not all. He read a part of it, I know.

Int. 56. Now you say there is something in this paper drawn up at Lincoln that you never intended to be in there (showing paper to witness). It reads here: "Now, therefore, the party of the second part hereby agrees, by its commissioners and by its authorized agent, M. H. Sessions, to enter into the necessary stipulation and to have decree of court entered up in the circuit court of the United States for the district of Nebraska eradicating the whole of the taxes."

Ans. 56. That should read—eradicating all illegal taxes, or something like that. It was never intended to read the whole of the taxes, in my mind.

Int. 57. Do you say here that this was intentionally read wrong to you?

Ans. 57. No, I don't say that, because I couldn't tell. It never was our intention that it should read in that shape to the court.

Int. 58. What you mean to say is now that you don't recollect that these words that you repeat at this time were in the agreement then?

Ans. 58. I don't recollect, and it never was our intention to have it read that way. It never was my intention to have it read that way.

Redirect examination by Mr. MILLER:

Int. 1. Mr. Broadbent, you in your cross-examination state that you understood that the decree was entered cancelling all the taxes. Now, did you know at that time, when you became aware that there was a decree of the court eradicating the taxes for those years, that Mr. Sessions had consented to the decree being entered
139 eradicating all the taxes on the lands for all the years without the court making any inquiry or examination into their illegality or irregularity?

Objected to as being incompetent and irrelevant and as calling for the opinion of the witness.

Ans. 1. No; I supposed that when I was told that the taxes were all cancelled—I supposed that the court had examined and had concluded that they were all illegal and had cancelled them all.

Int. 2. Now, Mr. Broadbent, you say in your cress-examination that you considered it a good thing to have it done, under all of the circumstances. Now what do you mean by that—if it had been done as you intended and supposed it had been done, isn't that what you mean?

Objected to as being irrelevant and incompetent.

Ans. 2. I believe that it has been a good thing for the county, under all the circumstances, notwithstanding. It has proved to be a good thing—the very best that probably could have been done under the circumstances.

And also that said THOMAS THOMPSON WILKINSON, being about the age of 50 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Thomas Thompson Wilkinson, and he did thereupon depose, testify, and says as follows, viz:

By Mr. MILLER:

Int. 1. State your full name and place of residence.

Ans. 1. My name is Thomas Thompson Wilkinson, and my residence is in Boone county, Nebraska—in section 20, range 7 west, north of the 6th principal meridian.

Int. 2. Mr. Wilkinson, how long have you resided in Boone county, Nebraska?

Ans. 2. The receiver's receipt for my homestead was dated the 27th day of May, 1871; a little over thirteen years.

Int. 3. Have you resided here ever since?

140 Ans. 3. In the summer of 1872—I forgot, in the fall of 1872 and the winter I was on the Republican on a buffalo hunt, and in the spring of 1877 I went to the Black Hills and was there two months.

Int. 4. Mr. Wilkinson, did you hold any office in Boone county in 1877 and 1878?

Ans. 4. Yes, sir.

Int. 5. What was it?

Ans. 5. County commissioner.

Int. 6. From what time and to what time were you county commissioner during your last term?

Ans. 6. I was elected in the fall of 1875 and served till the 1st of January, 1879, commencing on the first of January, 1876, I suppose it would be, and served till the first of January, 1879.

Int. 7. Mr. Wilkinson, where were you during the fall of 1877?

Ans. 7. I was in Boone county.

Int. 8. Were you acquainted with one Adam Smith?

Ans. 8. I was.

Int. 9. State whether or not, as county commissioner of Boone county, you had any dealings with Adam Smith relative to the taxes on the lands of the B. & M. Railroad Company in this county. State fully the facts.

Ans. 9. The facts in the case is this, that when I came home from the Black Hills, arriving in Boone county about the 1st of August, 1877, I found that Mr. Adam Smith and two of the commissioners had entered into a certain contract by which, upon condition that Mr. Smith would build a graded road from Albion to Columbus or Clarksville, and also bring in settlers, make a *bona fide* purchase from the B. & M. Railroad Company of something like one hundred thousand acres, I think it was, of their land, bring in a certain quantity of stock and settlers and assist in the general development of the county, that the commissioners would consent to a relinquishment of certain back taxes. That is the understanding I had at the time when I arrived in the county.

141 Int. 10. State what was done after you returned to the county in connection with the attempt to collect the taxes from the B. & M. Railroad Company.

Objected to as being irrelevant and incompetent.

Ans. 10. The first thing that was done I came to Albion, and I requested Mr. Peters to call a meeting of the board for the purpose of enjoining Mr. Smith from making this graded road and thereby creating a bill of expense upon the county, as I did not think that the board of county commissioners had any authority to relinquish these back taxes, and the meeting was called. I found that public sentiment, as far as I could find, all over this county was against me. The opinion seemed to prevail that these taxes or a very large portion of them could not be collected, and that the financial condition of the county was such that we could not afford to go into a long litigation with a powerful corporation on a doubtful case, as it was the opinion of those who were as well informed as myself that

it was a doubtful case, and at the meeting that was held in the court-house—it was attended by what I considered some of the most representative men of the county—Loren Clark was there, Judge Riley, Dr. Lewis, and quite a number of farmers as well as Dell Nicholson—I didn't have a supporter in the meeting—a single, solitary one. I also found as I passed over the country and came in contact with different men in different parts of the county that the same sentiment seemed to prevail, and that I was an obstructionist, and simply by pig-headedness that I was going to bust the county. That seemed to be the prevailing opinion, and that my own bondsmen, men above all others that was interested in having this matter done right, was in favor of that settlement as made by those other two commissioners.

Int. 11. Did you go to Lincoln on the 30th of January, 1878?

Objected to as being irrelevant and incompetent.

Ans. 11. I don't know exactly the date, but I went down
142 about that time.

Int. 12. You have heard the testimony of Mr. Broadbent in this case, have you not?

Objected to as being irrelevant and incompetent.

Ans. 12. Yes, sir.

Int. 13. Were you with Mr. Broadbent at the time he relates in his testimony as being in Lincoln?

Objected to as being irrelevant and incompetent.

Ans. 13. I was.

Int. 14. Where were you in Lincoln at the time the circumstances related by Mr. Broadbent took place?

Objected to as being irrelevant and incompetent.

Ans. 14. The first place we went to was to a hotel near the capital, to dinner. We arrived previous to the dinner hour and went there and took dinner. We arrived by the forenoon train from Omaha and left there about 7 o'clock and got to Lincoln, as near as I can judge, about 11, and went to that hotel for dinner. After dinner we then went down to the B. & M. land office.

Int. 15. Just relate, Mr. Wilkinson, what took place at the B. & M. land office.

Objected to as being irrelevant and incompetent.

Ans. 15. Well, as near as I can recollect, Mr. Broadbent has related about the circumstances. We went there and I think that we sent for some attorneys, who wasn't there, who could not be had, and that we afterwards sent for Mr. Sessions. That is as near as I can recollect, but I think Mr. Sessions wasn't the first man that we applied to—that is, as near as I can judge. It was nigh seven years ago, and I didn't charge my mind with all those circumstances.

Int. 16. Did you make any inquiry of Mr. Sessions or have any conversation with him there relative to the taxes on the B. & M. lands in this county for the years 1873 to 1877?

Objected to as being irrelevant and incompetent.

Ans. 16. We did.

Int. 17. State, as near as you can, what it was.

143 Objected to as being irrelevant and incompetent.

Ans. 17. As near as I can recollect, we told him that we had a tax difficulty betwixt the B. & M. Railroad Company, and that we had come down there to see what could be done about it, and his remark was that unless we had a good case it wasn't a paying business to go to law with a big corporation. That is as near as I can tell. I know that he said it was a hard matter to law a big corporation.

Int. 18. Did you make any agreement or contract with Mr. Sessions to employ him at that time?

Objected to as being irrelevant and incompetent.

Ans. 18. We did.

Int. 19. Did you enter into any written agreements or stipulations at that time?

Ans. 19. We did.

Int. 20. Did you read the stipulations that you made and the documents that you signed at that time?

Objected to as being irrelevant and incompetent.

Ans. 20. I don't think I did, but I believe Mr. Peters did. Mr. Peters was taken down there for the purpose of keeping a record of our proceedings.

Int. 21. Then you met there, did you, Mr. Wilkinson, as the board of county commissioners of Boone county?

Objected to as being irrelevant and incompetent.

Ans. 21. We did.

Int. 22. You transacted what business you transacted there as the board of county commissioners of Boone county, did you?

Objected to as being irrelevant and incompetent.

Ans. 22. Yes, sir.

Int. 23. Are you positive that Mr. Peters read all the papers that you signed there?

Objected to as being irrelevant and incompetent.

Ans. 23. Either Mr. Peters read them or I did before I signed them; I would not swear to which of the two, but one of the
144 two, I know.

Int. 24. Mr. Wilkinson, state if you remember what the agreement was, in substance, as verbally stated prior to signing any writings relative to the cancellation of all of the taxes.

Objected to as being irrelevant and incompetent.

Ans. 24. I don't believe I could do it. I don't believe I could give you any positive answer to that question, outside of what is on record.

Int. 25. Mr. Wilkinson, did you ever examine the records, the tax list, and the assessment-rolls of Boone county during all the years from 1873 to 1877, inclusive, with a view of ascertaining whether they were legal and regular or whether they were illegal and irregular in all their parts?

Objected as being irrelevant and incompetent.

Ans. 25. The question was repeatedly discussed at almost every meeting held by the board from the time the B. & M. objected to the payment of these taxes.

Int. 26. State when that was.

Objected to as being irrelevant and incompetent.

Ans. 26. The first discussion that came up on that question was in the fall of 1875, if I am not mistaken, at the time that we authorized Mr. Bollman to make a settlement with the B. & M. Company by accepting a certain percentage of those taxes; that from that time up to the day we went to Lincoln the question was discussed *pro* and *con.* at every meeting of the board.

Int. 27. Did you ever consult any attorneys and have the matter investigated and examined before that time?

Objected to as being incompetent and irrelevant.

Ans. 27. Before 1875?

Int. 28. Before you went to Lincoln.

Objected to as irrelevant and incompetent.

144½ Ans. 28. Yes, sir. We didn't consult them personally, but we employed Briggs and Ambrose, of Omaha, and offered them ten per cent. of those taxes if they would collect them. I may be mistaken, but I think that is correct. We offered what we thought the law would allow, and that was ten per cent., and then the only satisfaction we ever could get from them from that time until the advent of Mr. Smith was a demand for money. We did advance them some money and wrote back or instructed Mr. Peters to write to them to collect the tax and take the pay out of the tax, but everything seemed dead. There was no encouragement.

Int. 29. Did you remove the injunction?

Objected to as being irrelevant and incompetent.

Ans. 29. I think the injunction was removed. We then took the matter in our own hands to enforce the payment of those taxes by advertising these lands for sale upon a tax title. I think it was in 1875 or 1876 that we advertised these lands for sale upon a tax title. We, by the treasurer, offered those lands for sale and he sold the first year, I think, a few tracts, but in a little while some one went and consulted, if my memory is correct, with Mr. Clark, who understands the matter, I think, and the result of that consultation was that the purchasing of these lands entirely ceased, and from the time of this conversation having taken place Mr. Bollman failed to sell a rod; there were no purchasers, as far as my memory serves me.

The second year—that was in either 1876 or 1877, I am not sure—they was duly advertised according to law, for which we paid the printer, I think, a three-hundred-and-sixty-dollar warrant, if my memory is correct. The records will show. Mr. Bollman, the treasurer, then offered the lands for sale, and not a solitary rod, that I am aware of, could be sold.

Int. 30. Mr. Wilkinson, during all those times that you was offering this land for sale and unable to sell it what was the railroad company doing relative to the matter, that you know?

145 Objected to as being irrelevant and incompetent.

Ans. 30. They was doing simply nothing, that I could see. We wanted to get them to do something and could not.

Int. 31. Isn't it a fact that the railroad company stoutly maintained that they would never pay these taxes, and that they would law it to the end of the rope? Isn't that the sum and substance, now, of what the railroad company was doing?

Objected to as being irrelevant and incompetent.

Ans. 31. I don't think they did, from the simple fact that they made a proposition in a certain year—in the year 1875, I think it was—to pay some thousands of dollars, so much of the school fund and so much of the county fund. I remember a remark that Mr. Bollman made, that Mr. Touzalin said that they would pay a certain percentage on the school fund in behalf of education, and so much, I think, of the general fund. I don't think he made any proposition on any of the other funds.

Int. 32. Mr. Wilkinson, do you remember how many papers you signed at Lincoln at this time?

Objected to as being irrelevant and incompetent.

Ans. 32. I don't. I signed several.

Int. 33. Did you sign a memorandum of agreement authorizing Mr. Sessions to appear for you?

Objected as being irrelevant and incompetent.

Ans. 33. I can tell if I see my signature.

Int. 34. Is that your signature, Mr. Wilkinson (handing witness a paper)?

Objected to as being irrelevant and incompetent.

Ans. 34. Yes, sir; that is my signature.

Int. 35. You signed as chairman of the board of county commissioners, then in session, did you not?

Objected to as being irrelevant and incompetent.

Ans. 35. Well, we was acting in the interest of the county and in behalf of the county, and you can call it in session or whatever you are a mind to. We was acting in the interests of the
146 county.

Int. 36. Mr. Wilkinson, did you consider it at that time the interest of the county of Boone to sign that stipulation authorizing

Mr. Sessions to go into court and consent to the decree of the court cancelling and annulling all the taxes against the B. & M. Railroad Company in this county for the years 1873 to 1877, inclusive, without having examined and inquired into their legality, in view of the fact that they had already offered you thousands of dollers in payment of those taxes? Did you intend to enter into such stipulation at that time?

Objected to as being irrelevant and incompetent and as calling for the intention of the witness.

Ans. 36. Well, the way I looked upon it is this: when I consented to this agreement and signed that agreement I was looking to the benefit of the future. I considered the past was dead. I considered that those taxes could not be collected at that day, looking at our financial condition; that our financial condition was such that we could not offer to go into a long litigation on a doubtful case, considering the sparsely settled condition of the county, especially in view of the fact that the title to their lands was being contested by the Government of the United States, and was then in the Supreme Court, and there was no certainty when a decision would be arrived at on that question; that was the opinion that I felt.

Int. 37. Now, Mr. Wilkinson, did the B. & M. Railroad Company or any of its officers at that time in Lincoln offer to pay any of the taxes on these lands?

Objected to as being irrelevant and incompetent.

Ans. 37. Upon that occasion?

Int. 38. Yes.

Ans. 38. No, sir.

Int. 39. Did you have any conversation with them about these taxes at that time?

147 Objected to as being irrelevant and incompetent.

Ans. 39. I believe the question was put fairly and squarely to Mr. Touzalin whether they proposed to pay any of those taxes at that time, and he said, except at the end of a long lawsuit. He meant to say that they would fight us in court to the bitter end. That was the answer.

Int. 40. Let me refresh your memory a little. Didn't they make some such argument as this to you at that time: That this being a government of the people, for the people, and by the people, that therefore the people of Boone county, being a part of the government, were questioning their title and at the same time asking them to pay the taxes?

Objected to as being incompetent and irrelevant.

Ans. 40. Not at that time. I think after the thing was over I put the question to Mr. Touzalin whether that would cut any figure in the case, and he said he believed it would——

Mr. MARQUETT: "What cut a figure?"

WITNESS: "That the government was contesting the title of these

lands;" that they had the opinion of some of the best lawyers in the county that it would enable them to get out of paying those taxes for those years. I think that was his conversation, and finally I think I said: Then, upon the plea you will make that this is a government of the people, for the people, and by the people, and that the government contesting the legality of their title was the people virtually, and that you could not expect them to pay taxes upon property which they had no title to—something to that effect.

Int. 41. Mr. Wilkinson, did you hear the written stipulation that was presented to Mr. Broadbent here and read in Mr. Broadbent's presence?

Objected to as being incompetent and irrelevant.

Ans. 41. I believe I did; yes, I heard the closing part of it.

Int. 42. Do you remember what was in that stipulation?

Objected to as being incompetent and irrelevant.

148 Ans. 42. I can't remember what was in that stipulation, except it appeared that there was no space, as near as I can judge, betwixt our signatures and the closing part of the article.

Int. 43. So you do not recollect whether that language was read to you or not, do you?

Objected to as being irrelevant and incompetent.

Ans. 43. I don't recollect whether it was or not. My explanation is this, that Major Miller came to me and he said, among other things, that Mr. Broadbent told him that he had done the talking in regard to this contract that was made at Lincoln, and that I had but little to say; and that you told me that Mr. Broadbent had said certain things that were in the article that had passed my memory, but it was simply what you said Mr. Broadbent had said. He didn't testify to-day to anything of the kind.

Cross-examination by Mr. MARQUETT:

Int. 1. As I understand you, Mr. Wilkinson, the agreement made with Adam Smith was made while you were absent?

Ans. 1. Yes, sir.

Int. 2. And that you went to Lincoln as a commissioner of Boone county to ratify, to take steps to carry out, that agreement?

Objected to as being immaterial and as assuming that the witness has testified to a fact that he has not.

Ans. 2. That was what I have always understood—to carry out the stipulations entered into in that contract.

Int. 3. Now let's see. He was to build a road from here to the Union Pacific railroad?

Objected to as being immaterial and incompetent and not cross-examination.

Ans. 3. At Columbus or Clarksville.

Int. 4. And he was to bring in lot of settlers and purchase a large quantity of land and live stock?

149 Objected to as being immaterial and incompetent and not cross-examination.

Ans. 4. Yes, sir.

Int. 5. Has he done his part?

Objected to as being immaterial and incompetent and not cross-examination.

Ans. 5. I believe he has, and more.

Int. 6. Is Adam Smith dead?

Ans. 6. Yes, sir.

Int. 7. Well, after his death was this work all performed to the satisfaction of the commissioners?

Objected to as being immaterial.

Ans. 7. I believe to the letter; in fact, more than the commissioners expected was done by him and his successors for the improvement of the county. I believe that would be the testimony of a majority of those who were in the county at that date.

Int. 8. Under the circumstances was this agreement by which those taxes for the years 1873 up to 1877, inclusive, settled—those taxes of the B. & M. railroad settled—was that a good thing for the county?

Objected to as being incompetent, irrelevant, and immaterial.

Ans. 8. I believe that it was the very best thing that could have happened, especially taking into consideration what has been the output on the question at issue betwixt Antelope county and the B. & M.

Int. 9. When you were at Lincoln, what was said, if anything, and who said it, and when was it said, about your expenses being paid for going there—the expenses of this settlement?

Objected to as not being proper cross-examination.

Ans. 9. After all the business was performed, and I think while we was up at our hotel taking lunch, prior to going to the depot to take the train, Mr. Smith spoke about our expenses. We told him that we had instructed Mr. Peters to keep an account of all our expenses, and we expected to charge the county for it; that
150 we were acting in behalf of the county and at their expense, and Mr. Smith said that for some years I will have to pay a large portion of those taxes, and that I would just as soon pay your expenses as pay it into the county treasury for these taxes, and I don't see that it makes any material difference, and we did think so ourselves. We thought it would save a little to the county—that is, he would not pay all the taxes and it would save a little, and it made no difference to us; we calculated to charge the county.

Int. 10. Was anything said at this time about paying Mr. Sessions?

Objected to as not proper cross-examination.

Ans. 10. There was. The question was brought up in regard to Mr. Sessions and his fee, and Mr. Smith said, I will see that Mr.

Sessions is paid. I don't know whether he said he would see that it was paid or would pay it. We looked upon Smith as a *bona fide* purchaser of this land at this time and that he was equally interested with us in the welfare of the county, and more so, as far as property went. I don't know whether he had purchased the land then or not, but if he hadn't I think he had entered into the agreement.

Redirect examination by Mr. MILLER:

Int. 1. Was Mr. Peters present when this stipulation or contract was made?

Ans. 1. I believe he was.

Int. 2. Did he have anything to say?

Ans. Yes; he had considerable to say *pro* and *con.*

Int. 3. In favor of your doing it, was he?

Ans. 3. Yes. I believe he and others took the position that most of the people did. If he hadn't, I would have been there.

Int. 4. If it had been your own individual case would you have done it?

Ans. 4. No; for the reason that there is considerable of the mule about me and I don't believe I should. I might have lost by it.

Int. 5. Was there any other consideration for your signing the stipulation referred to than the certain contracts or agreements executed at that time in Lincoln and signed by the B. & M.
151 Railroad Company and Adam Smith in consideration of your signing that stipulation? Was there any other consideration?

Ans. 5. There was certain bonds that was given to guarantee the payment of taxes in the future.

Int. 6. That was all, was it?

Ans. 6. I believe that was all. I don't remember anything else.

Int. 7. Then, the only consideration of your signing the stipulation was the signing of certain other contracts and bonds at that time? (A paper was here handed to witness.)

Ans. 7. This is one of those bonds, is it?

Int. 8. Yes, sir.

Ans. 8. I believe that was one of the documents that was drawn up then, and that is one of their bonds signed by Clark, of the First National Bank. (The paper was here introduced in evidence and by agreement of both parties, plaintiff and defendants, a certified copy is attached instead of the original, and is marked "Exhibit C" and made part of this testimony.)

Int. 9. Now, here is another, Mr. Wilkinson. (A paper is here handed to witness.)

Ans. 9. Yes; that is another one. That is one of those that was drawn up there.

(The paper was here introduced in evidence and by agreement of both parties, plaintiff and defendants, a certified copy is attached instead of the original, and is marked "Exhibit D" and made part of this testimony.)

Int. 10. These two bonds and articles of agreement are the consideration, are they not, for you signing that stipulation?

Ans. 10. I think they are.

Recross-examination by Mr. MARQUETT:

Int. 1. Mr. Wilkinson, you don't mean to say that the signing of those papers and giving those bonds at Lincoln was the only consideration for this tax?

Ans. 1. No; that was only a part of the consideration.
152 We considered that the building of that road was a part of the consideration, and that bringing in of settlers and stock and settling up the county, that was a greater consideration than all the balance; the settling up of the county, in our judgment, that was the principal consideration in my mind, and I think in a large majority in the county.

Int. 2. Mr. Wilkinson, wasn't your action in the settlement of these taxes, after the same had been cancelled by the court and cancelled on the records here, ratified by the people of this county in a public meeting?

Objected to as being immaterial and not cross-examination.

Question withdrawn.

Adjourned by agreement and consent of the attorneys for the respective parties till the hour of 7 o'clock this evening, then to be continued at the same place.

C. P. DRENNEN,
Special Examiner.

Pursuant to adjournment, as above stated, on the 9th day of July, 1884, at 7 o'clock p. m., at the same place, J. S. Miller, Esq., and T. M. Marquett, Esq., appearing for the parties respectively, I resumed the taking of said depositions as follows, viz:

And also the said JOHN PETERS, being about the age of 35 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said John Peters and he did thereupon depose, testify, and say as follows, viz:

By Mr. MILLER:

Int. 1. Mr. Peters, are you the county clerk of Boone county?

Ans. 1. Yes, sir.

Int. 2. What is that book you have in your possession?

Ans. 2. County commissioners' record.

Int. 3. State if that record shows the sessions of the county commissioners, as a board of equalization, during the years 1873, 1874, 1875, 1876, 1877, and 1878?

153 Ans. 3. I will state I was not clerk at the time that the equalization was made—of 1873.

Int. 4. The record shows that fact?

Ans. 4. Yes, sir; it shows the fact of the commissioners' sessions from 1873 to 1878, inclusive.

Int. 5. On what pages does the record of the meeting of the board of county commissioners as a board of equalization for the year 1873 appear?

Ans. 5. For the year 1873 it appears on pages 54 and 55.

Int. 6. Now, on what page does the record of the board of equalization appear for the year 1874?

MARQUETT: We object to this as irrelevant and immaterial.

Ans. 6. As appears for 1874, pages 90 and 91.

Int. 7. On what pages does the record of the board of equalization appear for the year 1875?

Ans. 7. On pages 115, 116, and 117.

Int. 8. Now, on what pages does the record of the board of equalization appear for 1876?

Ans. 8. Pages 131, 132, and 133.

Int. 9. On what pages does the record of the board of equalization appear for 1877?

Ans. 9. Pages 151, 152, 153. That is all.

Int. 10. On what pages does the record of the board of equalization appear for 1878?

Ans. 10. Pages 174, 175, and 176.

Mr. MILLER: "We will offer in evidence a certified copy of the records of the county commissioners during those years as copied from the pages referred to."

Mr. MARQUETT: "I won't object to the copy, but I object to it as being incompetent, irrelevant, and immaterial."

(The said certified copies are introduced in evidence and are hereto attached, marked respectively Exhibits "E, F, G, H, and I.")

It is hereby stipulated that either party, during the time allowed them for taking their evidence, may take the evidence of wit-
154 nesses anywhere, before any one authorized to take depositions, by giving the other party five days' notice of the time and place, exclusive of the time required to travel to the place of taking the testimony. Further taking of this testimony is hereby adjourned until notice is given.

C. P. DRENNEN,
Special Examiner.

In the Circuit Court of the United States, District of Nebraska.

THE COUNTY OF BOONE, Complainant,
vs.
THE BURLINGTON and MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA, H. H. HUNNEWELL, Respondents. } In Equity.

You will please take notice that the above-named complainant desires the evidence to be adduced in said case to be taken orally, under the sixty-seventh rule in equity of the Supreme Court, as amended.

You will further take notice that by an order made in said cause by C. P. Drennen, special examiner in chancery of said court, the examination of witnesses on the part of complainant will take place before said examiner at his office, No 12, 2nd floor, Nebraska National Bank building, Omaha, Nebraska, on the 26th day of July, 1884, and proceed as the said examiner may direct, adjourning from day to day, if necessary.

J. C. COWIN,
Sol. for Complainant.

To Hon. T. M. Marquett, sol. for respondent.

Ordered, That the testimony of witnesses for complainant in foregoing cause mentioned may be taken before me, at the place therein stated, on the 26th day of July, 1884, at 10 o'clock a. m., such examination to proceed until completed, unless adjourned for cause.

It is further ordered that solicitors for respondents have five days' notice of said examination.

C. P. DRENNEN,
Examiner in Chancery.

155 I, T. M. Marquett, accept service of this notice and agree to the taking of testimony as therein provided.

T. M. MARQUETT,
Sol. for Resp.

DISTRICT OF NEBRASKA, *ss:*

The President of the United States of America to T. H. Bowman, Greeting:

We command you that, laying aside all manner of business and excuses whatsoever, you personally be and appear before the judges of the circuit court of the United States for the district of Nebraska, at Omaha, Nebraska, on the 26th day of July, 1884, to give evidence on behalf of the plaintiff in a suit pending in said court, wherein The County of Boone — plaintiff and The Burlington and Missouri River R. R. Co. in Nebr. and H. H. Hunnewell are defendants. Thereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 19th day of July, 1884, and in the 109th year of the Independence of the United States of America.

Attest:

[SEAL.] ELMER D. FRANK, *Clerk.*

Endorsed: United States circuit court, district of Nebraska. Boone County *vs.* B. & M. R. R. R. Co. *et al.* Subpœna. Omaha, Nebr., July 30, 1884. I hereby certify that I received this subpœna on the 21st day of July, 1884, and on the 23rd day of July, 1884, I served the same by delivering unto the hand of the within-named Thomas H. Bowman a true and certified copy of the same. G. H. Cox, sheriff of Boone Co., Nebr.

Fees:	
Mileage, 100 miles	$5 00
5 days' time, $1.50	7 50
Service and return	1 00
Copy	25
Total	$13 75

Filed Aug. 4, 1884. Elmer D. Frank, clerk.

Pursuant to adjournment, as above stated, and the notice hereto attached, on the 26th day of July, 1884, at the hour of 5
156 o'clock in the afternoon, at my office, in the Nebraska National Bank building, Omaha, Nebraska, J. S. Miller, Esq., being present for the plaintiff, I resumed the taking of said testimony as follows, viz:

And also the said THOMAS H. BOWMAN, being about the age of 50 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Thomas H. Bowman, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MILLER:

Int. 1. Mr. Bowman, state your full name and place of residence.
Ans. 1. Thomas H. Bowman; place of residence, Coleridge, Cedar county, Nebraska.
Int. 2. State if at any time you ever resided in Boone county, Nebraska, between the years 1873 and 1878.
Ans. 2. Yes, sir; I did.
Int. 3. State if you ever held any office in Boone county, Nebraska.
Ans. 3. I did.
Int. 4. What was it?
Ans. 4. I held different offices while I was there.
Int. 5. State if you was ever county commissioner of Boone county.
Ans. 5. Yes, sir.
Int. 6. During what years were you county commissioner of Boone county?
Ans. 6. A part of the year 1878, while I resided there.
Int. 7. Was you one of the county commissioners of Boone county on the 30th day of January, 1878?
Ans. 7. I was; yes, sir.

Not being able to complete the taking of this testimony by reason that there is not time to complete the taking of the same to-day and on account of the absence of Mr. Marquett, att'y for the respondents, at the request of Mr. Miller, att'y for complainant, I adjourn

the further taking of the same till Monday, July 28th, at the
157 hour of 10 o'clock in the forenoon, then to be continued at the same place.

C. P. DRUNNEN,
Special Examiner in Chancery.

Pursuant to adjournment, as above stated, on the 28th day of July, 1884, at the hour of 10 o'clock in the forenoon, at the same place, J. S. Miller, Esq., and T. M. Marquett, Esq., being present for the parties complainant and respondent, I resumed the taking of said testimony as follows, viz:

THOMAS H. BOWMAN, in continuance of his said testimony, did further depose, testify, and say as follows:

By Mr. MILLER:

Int. 1. Mr. Bowman, you may state if while you were commissioner of Boone county, Nebraska, you took any part in the matter of settlement or attempted settlement of the taxes claimed by Boone county on the lands of the Burlington and Missouri River Railroad Company in Nebraska.

Ans. 8. I did; yes, sir.

Int. 9. Were you acquainted with one Adam Smith at that time?

Ans. 9. Yes, sir.

Int. 10. State if you, in connection with other commissioners of Boone county, had any dealings with Adam Smith relative to the taxes on the Burlington and Missouri River railroad land.

Objected to as being irrelevant and incompetent.

Ans. 10. Yes, sir.

Int. 11. Now state, as near as you can, what transpired after you was elected commissioner of Boone county, in the fall of 1877, in connection with Adam Smith relative to these taxes. State fully.

Objected to as being irrelevant and incompetent.

Ans. 11. I don't know as I fully understand your question—whether you want me to state what transpired in the fall after I was elected, before I took——

Int. 12. No; only after you took the office, in January, 1878.

158 Ans. 12. I don't remember to have — any conversation with Mr. Smith in regard to the matter except once, and that was at Albion, at a meeting of the county commissioners.

Int. 13. When was that?

Ans. 13. I should say it was about the fore part of January, 1878.

Int. 14. State what transpired there.

Objected to as being incompetent and irrelevant.

Ans. 14. I don't think I could word what transpired—the conversation—but I can give the substance of it, I think. The matter was talked over with regard to the back taxes on the B. & M. Rail-

road Company's lands and with regard to the settlement of the taxes.

Int. 15. What was said about employing an attorney, if anything?

Ans. 15. I think it was agreed upon there to employ an attorney for the county and to consult him with regard to the legality of the taxes.

Int. 16. State whether or not there was any arrangement made at that time between the commissioners and Mr. Smith that the commissioners should go to Lincoln for that purpose.

Objected to as being incompetent and irrelevant.

Ans. 16. I think there was. I think at that time—I am not positive whether it was at that time; I think it was.

Int. 17. What was the arrangement, as near as you can remember, concerning that matter?

Objected to as being incompetent and irrelevant.

Ans. 17. As near as I can remember now, the arrangement was that we should—the commissioners should go to Lincoln and there secure the services of an attorney for the county.

Int. 18. Was that arrangement made with Mr. Adam Smith?

Objected to as leading and as being irrelevant and incompetent.

Ans. 18. I think the arrangement was made between the commissioners and Mr. Adam Smith.

159 Int. 19. State if you went to Lincoln at any time, and how long after that pursuant to that arrangement?

Objected to as being irrelevant and incompetent.

Ans. 19. We did go to Lincoln after that.

Int. 20. Can you tell us how long after that, or about when it was?

Ans. 20. It was the latter part of January, that same month; I could not tell the day.

Int. 21. When you went to Lincoln who went with you, Mr. Bowman?

Ans. 21. Mr. Wilkinson, Mr. Broadbent, and Mr. Peters.

Int. 22. Who were these parties? What office did they hold?

Ans. 22. Mr. Wilkinson and Broadbent were county commissioners; Mr. Peters was county clerk.

Int. 23. Did Mr. Smith go with you at that time?

Ans. 23. I am not positive whether Mr. Smith went with us from Omaha to Lincoln or not.

Int. 24. Did you meet Mr. Smith either in Omaha or in Lincoln on your arrival there?

Ans. 24. We did meet him at Lincoln.

Int. 25. Whereabouts at Lincoln did you first meet him, and when?

Ans. 25. I think we met him at the depot first.

Int. 26. Now, Mr. Bowman, state what took place, where you went, and who was with you.

Ans. 26. My recollection is that we went from the depot to a hotel or boarding-house and got our dinner.

Int. 27. Was Mr. Smith with you?

Ans. 27. I think he was.

Int. 28. Well, after dinner, then what did you do?

Ans. 28. We went from there, I think, to Mr. Touzalin's office.

Int. 29. Who was Mr. Touzalin?

Ans. 29. The land commissioner of the Burlington and Missouri River Railroad Company in Nebraska.

160 Int. 30. Now state what you did at the office of A. E. Touzalin, land commissioner of the B. &. M. Railroad Company?

Objected to as being irrelevant and incompetent.

Ans. 30. I said the first thing we wished to do was to secure an attorney for the county.

Int. 31. Did Mr. Smith go with you from the place where you took your dinner to Mr. Touzalin's office?

Ans. 31. I think he did.

Int. 32. State what you did there; what inquiries you made, if any, for an attorney, and what was said.

Ans. 32. We made inquiries for an attorney there, and some one suggested the name of a man which I can't call to mind; and, after some conversation with regard to him, some one in the office—I don't remember who—said that he was absent from the city and could not be had.

Int. 33. Well, what followed?

Ans. 33. Then some one suggested the name of Mr. Sessions as a competent attorney.

Int. 34. Then what did you do?

Ans. 34. After talking the matter over among ourselves we concluded to send for Mr. Sessions and did so.

Int. 35. Did Mr. Sessions come to where you were?

Ans. 35. He did.

Int. 36. To the office of Mr. Touzalin?

Ans. 36. Yes, sir.

Int. 37. What conversation, if any, did you have with Mr. Sessions there?

Objected to as being irrelevant and incompetent.

Ans. 37. We told him we wished his counsel and services in this matter with regard to the back taxes of the B. & M. railroad.

Int. 38. State, if you can remember, the exact conversation between the commissioners and Mr. Sessions at that time.

161 Objected to as being irrelevant and incompetent.

Ans. 38. I don't think I could state the exact conversation.

Int. 39. Can you repeat what Mr. Sessions said in answer?

Ans. 39. I don't know that I could repeat his language.

Int. 40. Well, the substance of it?

Objected to as being irrelevant and incompetent.

Ans. 40. I think he gave us to understand that our back taxes were illegal and could not be collected.

Int. 41. In that conversation, Mr. Bowman, with Mr. Sessions did you relate to Mr. Sessions or any one there in the office the facts relative to those taxes—the amounts, and for what years?

Ans. 41. I don't remember that we did.

Int. 42. Now, Mr. Bowman, did you have any conversation there with Mr. A. E. Touzalin, land commissioner of the B. & M. Railroad Company?

Ans. 42. Yes, sir.

Int. 43. State what he said, if anything, relative to these taxes.

Objected to as being irrelevant and incompetent.

Ans. 43. I don't know that I can remember very much of what he said—think he said that the company would never pay a dollar of those taxes.

Int. 44. Now, Mr. Bowman, this conversation with Mr. Touzalin and the conversation with Mr. Sessions transpired in the office of Mr. A. E. Touzalin, land commissioner of the Burlington and Missouri River Railroad Company in Nebraska, did it not?

Objected to as being leading, irrelevant, and incompetent.

Ans. 44. Yes, sir.

Int. 45. All of it?

Objected to as being leading, irrelevant, and incompetent.

Ans. 45. I think, all of it.

Int. 46. At the city of Lincoln?

Ans. 46. Yes, sir.

Int. 47. Now, Mr. Bowman, you may state whether or not you, the county commissioners, entered into any stipulation or
162 written agreements there relative to these taxes at that time.

Ans. 47. Yes, sir.

Int. 48. Take this paper, Mr. Bowman, and examine and see if that is the document which you signed in Mr. Touzalin's office at Lincoln, Nebraska, and state if its provisions and contents were signed by you knowingly. (Witness is here shown the agreement, which is marked "Exhibit B" in the testimony of Mr. Broadbent.)

Objected to as being irrelevant and incompetent.

Ans. 48. There is part of the latter part of this here that I can't recall to mind that it was in there. I think it was not, never intentionally.

Int. 49. What part of it, Mr. Bowman?

Objected to as being irrelevant and incompetent.

Ans. 49. "As eradicating the whole of the taxes charged against the lands of the first and third parties for the above years, all of

said taxes having been examined and agreed upon as being illegal and void."

Int. 50. That is all, is it?

Ans. 50. That is all.

Int. 51. Is that your signature, Mr. Bowman? (The witness' attention is here called to "Exhibit B," above mentioned.)

Ans. 51. Yes, sir.

Int. 52. Now, Mr. Bowman, you may state the circumstances under which this was signed—whether or not you read this document or whether or not it was read to you and by whom, if read to you. Just state the circumstances.

Objected to as being irrelevant and incompetent.

Ans. 52. I did not read it.

Int. 53. Was its contents read to you by any one?

Ans. 53. They were.

Int. 54. Who read it?

Ans. 54. My recollection of the matter now is that Mr.
163 Sessions read it.

Int. 55. Did he read to you any such language as is contained in that document I referred to?

Objected to as being incompetent, irrelevant, and leading.

Ans. 55. No, sir; I think not.

Int. 56. This language that you read there, did he read that language to you?

Objected to as being incompetent, irrelevant, and leading.

Ans. 56. No, sir; I think not.

Int. 57. Did you know at the time you signed that document that it contained any such provision?

Objected to as being incompetent, irrelevant, and leading.

Ans. 57. No, sir.

Int. 58. Would you have signed it had you known that it contained that provision?

Objected to as being incompetent, irrelevant, and leading.

Ans. 58. I would not.

Int. 59. Now, Mr. Bowman, state how you came to sign that document in the manner that you did—the circumstances and surroundings, what time of day it was, etc.

Objected to as being incompetent and irrelevant.

Ans. 59. It was in the evening, after dark some time.

Int. 60. State what was said and done and how it was done; just relate the circumstances.

Ans. 60. I don't know that I could relate what transpired, particularly, except that the document as read to us was agreed to by us and we signed it.

Int. 61. State whether or not Mr. Sessions, in explaining to you

the document that you signed, made any statement relative to it as to what it should contain.

Ans. 61. As to what the document should contain?

Int. 62. Yes; in regard to the signing away any legal taxes?

164 Objected to as being irrelevant and incompetent.

Ans. 62. He merely wanted it in the agreement that it was to be all illegal taxes, stating that that embraced all that he wished it to.

Int. 63. Mr. Bowman, did you ever examine the tax list and assessment-rolls of Boone county for those years, from 1873 to 1877, inclusive, with a view to ascertain whether the taxes were legal or illegal?

Objected to as being irrelevant and incompetent.

Ans. 63. No, sir.

Int. 64. Did Mr. Sessions ever make any examination of the books and records of Boone county relative to the taxes for those years or for any other purpose, to your knowledge?

Ans. 64. Not that I know of.

Int. 65. Did you sign any other document there at this time than the one that has been referred to?

Ans. 65. I don't remember that I did.

Int. 66. Was there any agreements and bonds given by the B. & M. Railroad Company or by Mr. Smith?

Ans. 66. Yes, sir; there was.

Int. 67. Mr. Bowman, examine that document and see if that is one of the papers. It is "Exhibit C."

(Exhibit "C" referred to in the testimony of Mr. Wilkinson (page 54) was here handed to the witness.)

Ans. 67. I think it is.

Int. 68. Now, Mr. Bowman, you may state whether or not the giving of that bond by the B. & M. Railroad Company and Adam Smith was not the consideration for your signing the stipulation heretofore sworn to by you, reference being made to Exhibit "B."

Ans. 68. Yes, sir.

Int. 69. Now, Mr. Bowman, all of this conversation that you have related with Mr. Sessions and Mr. Touzalin occurred and all of these documents were drawn and signed at the office of A. E. Touzalin, land commissioner of the Burlington and Missouri River
165 Railroad Company in Nebraska, at Lincoln, Nebraska, between the time of your arrival at Mr. Touzalin's office, after dinner, and the time that you retired to bed that night, and without leaving the office of Mr. Touzalin; is it not so?

Objected to as being leading, irrelevant, and incompetent.

Ans. 69. It was all done in the office, but I think we went to supper during the time. We went to supper and returned.

Int. 70. Did Mr. Smith go to supper with you?

Ans. 70. I think he did.

Int. 71. And returned to the office of Mr. Touzalin with you after supper?

Ans. 71. I could not say whether he returned with us or not.

Int. 72. Was he there during this time?

Ans. 72. Yes, sir.

Int. 73. Mr. Bowman, who paid you for your time and expenses on this trip?

Objected to as being incompetent and irrelevant and as being double, and as assuming that he was paid for his time and trouble.

Ans. 73. Adam Smith.

Int. 74. Mr. Bowman, did the county commissioners ever pay Mr. Sessions for his services as attorney, that you know of?

Ans. 74. Not to my knowledge.

Int. 75. Was there ever any bill presented by Mr. Sessions or by any one for him to the county for his services?

Ans. 75. Not during my term of office.

Int. 76. Did you hear Mr. Adam Smith say anything relative to the payment of Mr. Sessions' fee?

Ans. 76. I did.

Int. 77. What was it?

Ans. 77. I don't know whether I could repeat the exact language.

Int. 78. Well, as near as you can remember, what was said?

Ans. 78. I think he said that he would see that it was paid.

166 Int. 79. Mr. Bowman, whenever in your testimony you have referred to the B. & M. Railroad Company do you mean the Burlington and Missouri River Railroad Company in Nebraska?

Ans. 79. Yes, sir.

Int. 80. Whenever you have referred to Mr. Touzalin you have referred to A. E. Touzalin as land commissioner of the Burlington and Missouri River Railroad Company?

Ans. 80. Yes, sir.

Cross-examination by Mr. MARQUETT:

Int. 1. Mr. Bowman, how much did Mr. Smith pay you and when did he pay you? How long after this transaction?

Objected to as assuming that it was paid long after, when it has not been shown.

Ans. 1. I don't remember the amount that he paid us, but he paid us before we left Lincoln, or paid the money all to Mr. Peters, and he was to pay us separately when he got it changed.

Int. 2. Were you induced to make this settlement or arrangement by being paid this? Was that the inducement?

Ans. 2. No, sir.

Int. 3. There was nothing said about paying your expenses otherwise until after the whole arrangement was made there—after the settlement was made?

Ans. 3. I think nothing except our expenses.

Int. 4. When was that arranged that he was to pay those?

Ans. 4. At the time of the commissioners' meeting at Albion, when the arrangement was made to go to Lincoln.

Int. 5. Now, prior to this you stated at that meeting if you went you would have to have your expenses paid, did you?

Ans. 5. I don't remember how that was brought about.

Int. 6. Didn't the commissioners make an agreement with Adam Smith in the year 1877 in reference to having these taxes annulled, and was not this going to Lincoln and fixing this matter up
167 simply a consummation of this agreement?

Objected to as being incompetent and immaterial.

Ans. 6. Not to my knowledge.

Int. 7. Do you want that to be your answer?

Ans. 7. Yes, sir.

Int. 8. Wasn't this talked about at this Albion meeting, that the contract had already been made by the commissioners with Adam Smith to have these taxes annulled?

Ans. 8. Yes, sir.

Int. 9. And did you then go to Lincoln to consummate that contract? Wasn't that the object?

Objected to as being immaterial and incompetent.

Ans. 9. It wasn't, on my part; I knew nothing of any such contract, except by hearsay

Int. 10. You knew about the suit, that these taxes had all been enjoined by the court, didn't you?

Objected to as being immaterial and incompetent.

Ans. 10. No, sir.

Int. 11. Wasn't there a public meeting called to endorse you in your action in having these taxes enjoined by the court?

Objected to as being irrelevant and immaterial.

Ans. 11. I don't know what the purpose of the meeting was. There was a public meeting called.

Int. 12. Well, the meeting did endorse you, the commissioners, didn't it, in their action?

Ans. 12. I think they did, as a mass.

Int. 13. Do you mean in your evidence to say that Mr. Sessions read the agreement you refer to wrong, or that you don't now recollect whether those parts were in it or not?

Ans. 13. I don't think those parts that I objected to were read in my hearing.

Int. 14. But they might have been. It has been a good
168 while since, hasn't it?

Ans. 14. It has been a good while since, but I don't think they were read in my hearing.

Int. 15. When did you first find out that that part which you now say you didn't hear read in that agreement was in it?

Ans. 15. I didn't know it till within a few days.

Int. 16. You never knew it until Mr. Miller told you of it, did you?

Ans. 16. Yes, sir—that is, I heard it was before I saw Mr. Miller, before I ever met Mr. Miller.

Int. 17. You heard it was, you say?

Objected to as being immaterial and irrelevant.

Ans. 17. Yes, sir.

Int. 18. Who did you hear it from?

Ans. 18. Mr. Cox.

Int. 19. That, you say, was about three or four days before Miller spoke to you?

Ans. 19. Somewhere thereabouts—two or three days.

Int. 20. Now, when did Mr. Miller speak to you about these words not being in the contract?

Ans. 20. Saturday last.

Int. 21. Who is this Mr. Cox who first spoke to you about those words not being there?

Objected to as being immaterial, incompetent, and irrelevant.

Ans. 21. He is now sheriff of Boone county.

Int. 22. How came he to speak to you?

Objected to as being immaterial, incompetent, and irrelevant.

Ans. 22. I road with Mr. Cox from my home in Cedar county to Albion.

Int. 23. And he told you there was some words in that agreement that were never read to you, did he?

Ans. 23. No, sir.

Int. 24. Well, what did he say to you about the agreement?

Objected to as being immaterial, incompetent, and irrelevant.

Ans. 24. He told me about this clause in the agreement,
169 stating that the whole of the taxes were annulled—that all of the taxes were set aside as illegal.

Int. 25. And then who next spoke to you about this agreement?

Objected to as being immaterial, incompetent, and irrelevant.

Ans. 25. I don't think anybody spoke to me directly about that till I met Mr. Miller, and he spoke to me.

Int. 26. What did he say about that?

Ans. 26. He read the contract to me and asked me if that was the article that I signed.

Int. 27. Didn't he say at the same time that the other commissioners said it wasn't the article they had signed?

Ans. 27. I don't think he did.

Int. 28. Didn't say anything about the other commissioners—about it not being the article that the other commissioners had signed, did he?

Ans. 28. I don't know that he did at that time.

Int. 29. Well, at what time did he say that to you, if ever?

Objected to as immaterial, irrelevant, and not proper cross-examination.

Ans. 29. While we were on the train, I think, between here and Columbus.

Int. 30. Well, just state what he said.

Objected to as being immaterial and irrelevant.

Ans. 30. He stated that they said there was something in there that was not in the contract or was not read to them as being in the contract when they signed it.

Int. 31. The consideration for your agreement in having these taxes annulled was that Mr. Smith or the company he represented was to build a wagon road from Albion to some point on the Union Pacific railroad, wasn't it?

Ans. 31. It was part of it.

Int. 32. What was the other part of the consideration?

170 Ans. 32. That they were to enter into bonds to pay their legal taxes of 1878 and thereafter for five years.

Int. 33. Was this wagon road built?

Objected to as being immaterial and irrelevant.

Int. 33. By Mr. Smith or the company which he represented?

Ans. 33. Yes, sir.

Int. 34. Did the fact that Mr. Smith agreed to pay your expenses and did pay your expenses and your time have any influence upon you in making this agreement by which these taxes were annulled?

Ans. 34. No, sir.

Int. 35. And what you did in having these taxes annulled for the county was done in good faith, believing it to be for the best interests of the county to do so?

Ans. 35. You ask if it was done in good faith?

Int. 36. Yes, sir.

Ans. 36. Yes, sir; it was.

Int. 37. Wasn't this settlement of taxes a good thing for Boone county?

Objected to as being immaterial and as calling for the opinion of the witness.

Ans. 37. I do not know.

Int. 38. You moved away shortly after, did you?

Ans. 38. Yes, sir.

Redirect examination by Mr. MILLER:

Int. 1. You state in your cross-examination that there was a public meeting held, at which the mass endorsed your action in this matter. How long after your return from Lincoln was this public meeting held?

Ans. 1. I could not tell anything about the time that it was.

Int. 2. Who was present at that meeting? Wasn't Mr. Touzalin there?

Ans. 2. I think he was.

Int. 3. Didn't Mr. Touzalin address the meeting at that time?

171 Ans. 3. I think he did.

Int. 4. You mean Mr. Touzalin, the land commissioner of the B. & M. Railroad Company, do you?

Ans. 4. Yes, sir.

Int. 5. Who paid your fare from Albion to Lincoln—who footed the bills at that time?

Ans. 5. I think Mr. Peters.

Adjourned, by agreement and consent of the attorneys for the parties, complainant and respondent, till 2 o'clock p. m., then to continue the taking of this testimony at the same place.

At 2 o'clock p. m., met pursuant to adjournment, as above stated, and afterwards adjourned, by agreement and consent of the attorneys for the parties, complainant and respondent, to meet forthwith at the office of the clerk of the United States courts, in Omaha, Nebraska.

C. P. DRENNEN,
Special Examiner.

Pursuant to adjournment, as above stated, on the 28th day of July, 1884, at the office of the clerk of the United States courts, in the city of Omaha, Nebraska, J. S. Miller, Esq., appearing for complainant, and T. M. Marquett, Esq., for respondents, I resumed the taking of said testimony as follows, viz:

And also the said ELMER D. FRANK, being about the age of — years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Elmer D. Frank and he did thereupon depose, testify, and say as follows, viz:

By Mr. MILLER:

Int. 1. State your name, occupation, and place of residence.

Ans. 1. My name is Elmer D. Frank; clerk of the United States circuit court for the district of Nebraska, and reside at Omaha.

Int. 2. As clerk of the United States circuit court have you charge of the records of that court?

172 Ans. 2. I have.

Int. 3. Will you turn to the record of the case of H. H. Hunnewell *vs.* The B. & M. Railroad Company and The County of Boone, of March, 1878. Mr. Frank, what does the record disclose as to the proceedings in that case?

Objected to as being irrelevant and incompetent.

Ans. 3. The record shows that on March 4th, 1878, a bill and stipulations were filed in said case, and on the 8th of March, in the same year, a decree was entered.

Int. 4. You say the records disclose a stipulation filed on the 4th of March?

Ans. 4. Yes, sir.

Int. 5. Was that stipulation recorded?

Ans. 5. No, sir; that is to say, I find no record of it in my search.
Int. 6. Have you made any search for the stipulation?
Ans. 6. I have.
Int. 7. Have you found it among the files and papers in the case?
Ans. 7. I have not.

Mr. MILLER: "We will now offer in evidence a certified copy of the journal entry and decree in the case."

(Said certified copy was here introduced in evidence and is hereto attached, marked "Exhibit K," and made part of this testimony.)

By agreement of the parties, complainant and respondent, it is stipulated that the special examiner, C. P. Drennen, may have until the 5th of August, 1884, to file complainant's evidence, and if he finds it necessary, when he comes to take the testimony for respondents, he shall have the same length of time, to wit, until the 5th day of October, 1884, to file the respondents' evidence.

The complainant rests.

UNITED STATES OF AMERICA, *District of Nebraska:*

STATE OF NEBRASKA, } ss:
County of Douglas, }

173 I, C. P. Drennen, a special examiner in chancery, duly appointed by the circuit court of the United States for said district to take the testimony in the cause in the caption of the said testimony named, a certified copy of the order of appointment being hereto attached, in accordance with the order of the court and the stipulation made and entered into between the above-named parties, by their attorneys, which stipulation is hereto attached, and in accordance with the oral agreements of the attorneys for the said parties, complainant and respondent, as noted in the foregoing testimony, do hereby certify that on the 5th day of July, A. D. 1884, at 10 o'clock in the forenoon, I was attended at the office of Miller & Price, in the town of Albion, county of Boone, and State of Nebraska, by J. S. Miller, Esq., attorney for the said complainant, and T. M. Marquett, Esq., attorney for the said respondents, and the witnesses, S. H. Bollman and S. P. Bollman; and also, on the 9th day of July, 1884, at the hours stated, at the same place, by the said attorneys and the witnesses, S. H. Bollman, Edwin Broadbent, Thomas Thompson Wilkinson, and John Peters; and also, on the 26th day of July, 1884, at the hour of 5 o'clock in the afternoon, I was attended at my office, in the city of Omaha, county of Douglas, and State of Nebraska, in pursuance of the notice and subpœna hereto attached, by the said attorneys, and the witness, Thomas H. Bowman; and also, on the 28th day of July, 1884, at the hour of 10 o'clock in the forenoon, at the place last above named, by said attorneys, and said witness Thomas H. Bowman; and at the office of the clerk of the United States district and circuit courts for the district of Nebraska, at Omaha, Nebraska, by said attorneys, and the witness, Elmer D. Frank, all of said witnesses being of sound mind

mind and lawful age; and the said witnesses were by me sworn to testify the truth, the whole truth, and nothing but the truth touching such matters as were of them inquired in the cause, and the testimony was by me reduced to writing in the presence of the witnesses and from their statements, and that the signing of
174 the said testimony by said witnesses was waived by consent and agreement of the said attorneys for the parties, complainant and respondent.

I have retained the said testimony in my possession for the purpose of transcribing the same from my short-hand notes and of delivering the same to the court.

And I do further certify that I am not of counsel nor attorney for either of the parties in said testimony and caption named, nor in any way interested in the event of the said cause named in said caption. I further certify that the Exhibits "A, B, C, D, E, F, G, H, I, & K," which are hereto attached, were introduced in evidence in said cause during the taking of said depositions.

In testimony whereof I havee hereunto set my hand this 4th day of August, A. D. 1884.

C. P. DRENNEN,
Special Examiner.

Fee bill:

C. P. Drennan, special examiner	$60 90
S. H. Bollman, witness, 2 days, a mi.	3 20
S. P. Bollman, witness, 1 day, 1 mi.	1 60
Edwin Broadbent, witness, 1 day, 15 mi.	3 00
Thomas T. Wilkinson, witness, 1 day, 3 mi.	1 80
John Peters, witness, 1 day, 1 mi.	1 60
Thomas H. Bowman, witness, 3 days, 100 mi.	14 50
Elmer D. Frank, witness, 1 day, 1 mi.	1 60

Upon the back of said depositions appear endorsements in words and figures following, to wit: No. 30, H. Delivered in person by special examiner and filed August 4, 1884. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 6th and 22nd days of October, 1884, depositions were filed in said case; which said depositions are in words and figures following, to wit:

175 EXHIBIT A (to M. H. Session's Testimony, C. P. D.)

Commissioners' Record, One Hundred and Sixth Session, Feb. 4th, 1878.

Board met pursuant to adjournment.
Present: Commissioners Wilkinson, Broadbent, and Bowman.
Minutes of last two meetings read and approved.

* * * * * * *

On motion, all matters and things done by the county commissioners at Lincoln, Nebraska, on January 30th, 1878, relative to the settlement of the taxes of the Burlington and Missouri River Rail-

road Company and the Adam Smith contract are hereby confirmed and ratified, and the clerk be instructed to record the same in the commissioners' record.

LINCOLN, NEBR., *Jan'y 30th*, 1878.

Know all men by these presents that a certain contract bearing date July 18th, 1877, having been made by the county of Boone, through its commissioner, and Mr. Adam Smith, of Chicago, Illinois, wherein the second party agreed to make the purchase of certain lands of the Burlington and Missouri River Railroad Company in Nebraska, and to pay all legal taxes assessed thereon for the year 1878 and thereafter, and to make certain improvements in the county of Boone; in consideration of which the county commissioners of the said county agreed at some future day to take the necessary legal steps for the wiping out of all the illegal taxes claimed to be due upon the lands of the said Burlington and Missouri River Railroad Company in Nebraska for the years 1873, 1874, 1875, 1876, and 1877; and whereas the second party has partly completed the improvements agreed upon and has entered into a bond for the completion of the same; and whereas the second party is now prepared to enter into the necessary obligations for the payment promptly hereafter of the legal taxes; and whereas the county commissioners have this day taken the necessary legal action for the wiping out of all the illegal taxes claimed to be due for the said years above-mentioned; and whereas the said Adam Smith has transferred his
176 rights to the Nebraska Land and Live Stock Company, which said company has assumed all duties and obligations of said Adam Smith:

Therefore it is hereby agreed, and the Nebraska Land and Live Stock Company binds itself in the sum of ten thousand (10,000.00) dollars, to pay all legal taxes for the years 1878 to 1882, inclusive, which may be levied upon the lands purchased by the said Nebraska Land and Live Stock Company from the said railroad company in the county of Boone, Nebraska; and the said Nebraska Land and Live Stock Company hereby binds itself, under the same penalty as above stated, to pay all taxes which may be levied upon the lands of the Burlington and Missouri River Railroad Company in the said county of Boone, Nebraska, for the said years 1878 to 1882, inclusive, should said railroad company fail to pay the said taxes.

NEBRASKA LAND AND LIVE STOCK COMPANY,
By ADAM SMITH, *President.*

The Burlington and Missouri River Railroad Company in Nebraska binds itself in the sum of ten thousand (10,000.00) dollars to pay all legal taxes for the years 1878 to 1882, inclusive, upon all its lands in Boone county, Nebraska, which have not been absolutely sold and deeded to the Nebraska Land and Live Stock Company or to other parties.

BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBR.,
By A. E. TOUZALIN, *Land Commisssoner.*

I, John R. Clark, of Lincoln, Nebraska, do hereby bind myself in the sum of ten thousand (10,000.00) dollars for the performance by the Burlington and Missouri River Railroad Company in Nebraska of the above obligations as entered into by the said railroad company should the said railroad company fail to carry out this obligation as therein stated.

JNO. R. CLARK.

LINCOLN, NEBRASKA, *Jan'y 30th*, 1878.

177 That whereas the taxes on the lands of the B. & M. R. R. R. Co. in Nebraska, in Boone county, both State, county, and school taxes, are unpaid for the years 1873, 1874, 1875, 1876, and 1877;

And whereas the said company disputes the legality of said taxes and it is necessary to test their legality:

Therefore be it resolved, That this board employ M. H. Sessions as its attorney to defend any suit that may be brought against the county or to bring any suit he may deem best to test the legality of said taxes, and if he deem that any of said taxes are illegal he may make such compromise in the matter with the said company as he may deem best for the interest of the county in the premises and the said M. H. Sessions is hereby authorized to enter an appearance for the county of Boone, Nebraska, in any suit which may be brought by the said Burlington and Missouri River Railroad Company in Nebraska or by any stockholder thereof, and to take action as directed by said commissioners, and to waive issuance and service of a subpœna in the case.

THOMAS T. WILKINSON,
T. H. BOWMAN, *Chairman*,
EDWIN T. BROADBENT,
Co. Com'rs.

Attest: JOHN PETERS,
County Clerk.

LINCOLN, NEBRASKA, *January 30th*, 1878.

Memorandum of agreement made by and between the Burlington and Missouri River Railroad Company in Nebraska, first party, and the County of Boone, Nebraska, by its commissioners, of the second part, and the Nebraska Land and Live Stock Company, of the third part.

Whereas parties of the 1st and 3rd parts have this day entered into an agreement and bonds for the performance of certain obligations conditioned on the absolute release by the second party of all illegal taxes levied upon the lands of the first and third party in the county of Boone, Nebraska, for the years 1873 to 1877,
178 inclusive:

Now, therefore, the party of the second part hereby agrees, by its commissioners and by its authorized attorney, M. H. Sessions, to enter into the necessary stipulations and to have a decree of

court entered up in the circuit court of the United States for the district of Nebraska eradicating the whole of the taxes now charged against the lands of the first and third parties for the above years, all of said taxes having been examined and agreed upon as being illegal and void.

THOMAS T. WILKINSON,
EDWIN BROADBENT,
T. H. BOWMAN, *Chairman,*
Co. Com'rs.

M. H. SESSIONS,
Attorney for Boone Co.

Attest: JOHN PETERS,
County Clerk.

In pursuance of a certain contract entered into by Adam Smith, of Chicago, Illinois, with the county of Boone, Nebraska, for the completing of a certain road from Albion, the county-seat of said county, to a point on the Union Pacific railroad, said road having now been partly completed:

Now, therefore, the Nebraska Land and Live Stock Company doth by this bond bind and obligate itself in the sum of ten thousand (10,000) dollars to complete the said road, as shown forth in the said agreement with the said county of Boone, within the time of the said contract entered into by the said Adam Smith—

The intention of this bond being to obligate the said Nebraska Land and Live Stock Company in the sum of ten thousand dollars for the full performance by the said Adam Smith of the agreement made with the said county of Boone Nebraska.

Jan'y 30th, 1878.

NEBRASKA LAND & LIVE STOCK CO.,
By ADAM SMITH, *President.*

Attest: JOHN PETERS,
County Clerk.

I hereby certify the above proceedings to be a correct copy of the 106th session of commissioners' records of Boone county, Nebraska.

Witness my hand and official seal this 12th day of September, 1883.

[SEAL.] JOHN PETERS,
County Clerk.

Filed Oct. 6, 1884.

ELMER D. FRANK, *Clerk.*

179 EXHIBIT B (J. D. McFarland's Testimony, C. P. D.).

Sales of Lands by B. & M. and C., B. & Q. R. R. Cos. in Boone Co., Neb., March 1, 1878, to July 1, 1883.

Page.	Deeded.		On cont.		Total.	
	Acres.	Consid.	Acres.	Consid.	Acres.	Consid.
1	2,138.21	7,401 03	5,857.66	16,034 23	7,995.87	23,435 26
2	911.73	2,632 74	6,286.52	18,703 78	7,198.25	21,336 52
3	5,857.32	16,485 22	2,568.56	8,538 67	8,425.88	25,023 89
4	2,969.04	8,317 53	4,720.48	14,164 88	7,689.52	22,482 41
5	13,871.82	14,746 14	2,720	4,415 04	16,591.82	19,161 18
6	4,256.73	7,626 68	4,312.70	12,740 39	8,569.43	20,367 07
7	1,040	2,170 40	8,561.32	23,715 37	9,601.32	25,885 77
8	3,864.91	11,320 94	4,339.85	14,897 74	8,204.76	26,218 68
9	7,308.94	11,296 02	3,760	11,762 72	11,068.94	23,058 74
10	12,626.76	13,125 74	2,526.45	7,463 36	15,153.21	20,589 10
11	9,448.39	11,324 78	1,234.39	16,229 74	10,682.78	27,554 52
12	3,664.98	5,522 46	5,359	17,916 53	9,023.98	23,438 99
13	2,829.54	6,882 89	7,183.21	19,742 78	10,012.75	26,625 67
14	21,093.82	23,596 21	2,059.80	4,548 57	23,153.62	28,144 78
15	2,387.88	9,383 53	7,217.98	24,321 25	9,605.86	33,704 78
	94,270.07	151,832 31	68,707.92	215,195 05	162,977.99	367,027 36

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Considerat.	Data if paid.	
								Name.	Date of sale.
	12115	N. E. ¼	5	18	5 W.	160	206 40	N. L. & L. S. Co.	Ap'l 2, 1878.
	12116	S. E. ¼	5			160	240	"	" 2, "
	12117	S. W. ¼	5			160	206 40	"	" 2, "
	12118	N. W. ¼	5			160	206 40	"	" 2, "
	12119	N. E. ¼	7			160	206 40	"	" 2, "
	12120	S. E. ¼	7			160	206 40	"	" 2, "
	12130	S. W. ¼	7			159.45	205 69	"	" 2, "
	12129	N. W. ¼	7			158.59	271 19	"	" 2, "
	17272	N. ½ and S. E. ¼	1	19	5	484.16	847 79	"	Dec. 30, 1879.
	17271	S. E. ¼	3			160	192 72	"	" 30, "
	17270	N. E. ¼	5			160.99	141 03	"	" 30, "
	22038	S. E. ¼	5			160	800	O. D. Overton	June 29, 1883.
Deeded	14022	N. W. ¼	9			160	220	M. E. Stevens	Aug. 31, "
	20701	N. E. ¼	11			160	864	J. Holsted	July 8, 1882.
	20664	S. E. ¼	11			160	648	J. Holst	" "
Deed	20700	S. W. ¼	11			160	720	J. Vosen	July 8, 1882.
Deed	20699	N. W. ¼	11			160	1,008	M. Frahm	" "
	12123	N. E. ¼	29			160	342 40	N. L. & L. S. Co.	Ap'l 2, 1882.
	12124	S. E. ¼	29			160	342 40	"	" 2, "
	12125	N. W. ¼	29			160	308 80	"	" 2, "
Deeded	14872	E. ½ N. W. ¼	35			80	210 24	"	Dec. 28, "
	14320	N. E. ¼	1	20	5	150.74	414 53	Martha Nelson	Oct. 4, "
Deed	21407	S. E. ¼	1			160	560	P. P. Johnson	Aug. 30, 1882.
Deed	21408	S. W. ¼	1			160	560	do.	" "
Deed	18632	N. W. ¼	1			151.70	546 12	I. L. Junge	Aug. 9, 1880.
Deed	21409	N. E. ¼	3			153.41	383 52	P. P. Johnson	Aug. 30, 1882.
Deed	21410	S. E. ¼	3			160	400	"	" "
Deed	21411	S. W. ¼	3			160	480	"	" "
	20811	N. W. ¼	3			155.03	662 75	H. Schnerkart	July 29, "

Deed	17184	N. E. ¼	5			155.10	352 85	J. Winkler	Dec. 5, 1879.
	13385	S. E. ¼	5			160	440	John O'Neill	Jun- 20, "
	13457	E. ½ S. W. ¼	5			80	220	Jas. Tearney	July 2, "
	18364	W. ½ S. W. ¼	5			80	280	W. M. Winkler	May 20, 1880.
Deed	21412	E. ½ N. W. ¼	5			78	300 30	P. P. Johnson	Aug. 30, 1882.
	12431	W. ½ N. W. ¼	5			78.30	156 60	Ann McCormick	Ap'l 15, "
Deeded	13573	N. E. ¼	7			160	320	Milton George	July 16, "
	13868	S. E. ¼	7			160	520	Jas. E. Galbraith	" 19, "
	13867	S. W. ¼	7			147.34	589 36	"	" 19, "
Deed	21413	E. ½ N. W. ¼	7			80	280	P. P. Johnson	Aug. 30, 1882.
	13386	W. ½ N. W. ¼	7			67.78	186 40	John Halligan	June 19, "
	17515	N. E. ¼	9			160	576	T. A. Wanack	Jan. 21, 1880.
Deed	21414	N. E. ¼	11			160	480	P. P. Johnson	Aug. 30, 1882.
	20527	N. E. ¼	13			160	576	I. L. Nelson	June 12, "
	20526	S. E. ¼	13			160	720	"	" "
	18958	S. ½ S. E. ¼	17			80	320	I. Byrne	Nov. 24, 1880.
	21415	W. ½ N. W. ¼	17			80	520	P. P. Johnson	Aug. 30, 1882.
	13858	S. E. ¼	19			160	520	H. W. Brewer	Aug. 9, "
	13857	S. W. ¼	19			147.62	479 76	C. H. Nichols	" 10, "
	18689	N. W. ¼	19			147.66	516 81	I. Olsen	Aug. 9, 1880.
	21416	N. E. ¼	23			160	560	P. P. Johnson	Aug. 30, 1882.
	20595	N. W. ¼	23			160	960	S. Nordstrom	June 27, "
	18089	S. W. ¼	25			160	720	F. W. Eng	Ap'l 5, 1880.
	13381	N. W. ¼	25			160	440	L. G. Pusard	June 17, "
181	20180	N. E. ¼	27	20	5 W.	160	480	L. Johnson	M'ch 14, 1882.
	21417	N. E. ¼	29			160	840	P. P. Johnson	Aug. 30, 1882.
	14108	W. ½ S. E. ¼	29			80	165	Jeremiah Saide	Sept. 10, 1878.
	14109	S. W. ¼	29			160	301 60	"	" 10, "
Deed	20665	N. W. ¼	29			160	576	M. Frahm	July 8, 1882.
Deed	15270	N. ½ S. E. ¼	31			80	54	H. Mock	M'ch 20, 1879.
Deeded	14427	N. W. ¼	31			148.81	167 41	Wm. B. Wheeless	Oct. 15, 1878.
	13545	N. E. ¼ & S. W. ¼	33			320	800	Jas. Leonard	June 21, 1878.
	17818	S. E. ¼	33			160	600	R. Cunningham	M'ch 8, 1880.
	13480	S. E. ¼	35			160	560	J. D. Brewer	June 29, 1878.
	13479	S. W. ¼	35			160	520	"	" 29, 1878.
	21418	N. E. ¼	3	21	5 W.	162.87	350 17	P. P. Johnson	Aug. 30 1882.
	21419	S. E. ¼	3			160	480	------do.	" "
	21420	N. ½ S. W. ¼	3			80	240	------do.	" "
	13548	S. ½ S. W. ¼	3			80	220	K. Anderson	July 8, 1878.

Tax List No. —for the Year —. Lands of the Burlington & Missouri R. R. R. in Boone County, Nebraska—Continued.

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Consid.	Data if paid.	
								Name.	Date of sale.
	21421	N. W. ¼	3			162.77	406 92	P. P. Johnson	Aug. 30, 1882.
Deed	20677	N. E. ¼	5			161.65	509 19	T. F. Mangan	July 7, "
	13508	S. W. ¼	5			160	880	M. Mathews	July 6, 1878
Deed	20645	N. W. ¼	5			161.27	653 14	T. F. Mangan	July 7, 1882.
	13507	N. E. ¼	7			160	640	K. Jensen	July 5, 1878.
	21063	S. ½	7			319.79	987 30	J. D. Godfrey	Aug. 15, 1882.
	18976	N. W. ¼	7			159.85	639 40	H. P. Speer	Nov. 13, 1880.
Deed	18127	N. E. ¼	9			160	608	T. J. Kaase	Jan. 7, 1878.
	21422	S. E. ¼	9			160	400	P. P. Johnson	Aug. 30, 1882.
	21423	S. W. ¼	9			160	400	"	" "
	21424	N. E. ¼	11			160	344	"	" "
	21425	S. E. ¼	11			160	480	"	" "
	21426	N. ½ & S. E. ¼ of S. W. ¼	11			120	420	"	" "
	21427	N. W. ¼	11			160	400	"	" "
	21428	S. ½ S. W. ¼	13			80	280	"	" "
	21429	N. ½ N. W. ¼	13			80	280	"	" "
	21430	N. ½ N. E. ¼	15			80	280	"	" "
Deeded	13409	S. W. ¼ N. E. ¼	15			40	65	L. Thomson	June 24, "
	21431	E. ½ S. E. ¼	15			80	280	P. P. Johnson	Aug. 30, 1882.
	13546	W. ½ S. E. ¼	15			80	150	L. Thompson	June 24, 1878.
	21432	S. W. ¼	15			160	480	P. P. Johnson	Aug. 30, 1882.
	21433	N. W. ¼	15			160	480	"	" "
	21434	N. E. ¼	17			160	400	"	" "
	21435	S. E. ¼	17			160	344	"	" "
	16309	E. ½ S. W. ¼	17*						
	21436	W. ½ S. W. ¼	17			80	172	do.	" "
	21064	N. W. ¼	17			160	456	J. D. Godfrey	Aug. 15, 1882.
	21437	N. E. ¼	19			160	400	P. P. Johnson	Aug. 30, 1882.
	21438	S. E. ¼	19			160	344	"	" "

	21439	S. W. ¼	19			160.85	482 55	"	"	"	"
	21440	N. W. ¼	19			160.39	344 84	"	"	"	"
	20889	N. E. ¼	21			160	456	E. B. Young	Aug.	2,	"
	20888	S. E. ¼	21			160	456	"	"	"	"
	20887	S. W. ¼	21			160	532	"	"	"	"
	20886	N. W. ¼	21			160	532	"	"	"	"
182		Forward.									
Deed	21441	N. E. ¼	23	21	5 W.	160	480	P. P. Johnson	Aug.	30,	1882.
Deed	21442	S. E. ¼	23			160	400	do.	"	"	"
	16075	S. W. ¼	23			160	227 76	N. L. & L. S. Co.	July	2,	1879.
	21061	N. W. ¼	23			160	532	J. D. Godfrey	Aug.	15,	1882.
Deed	21443	N. E. ¼	25			160	400	P. P. Johnson	Aug.	30,	1882.
Deeded	14434	S. E. ¼	25			160	200	A. Anderson	Oct.	17,	1878.
Deeded	14432	S. W. ¼	25			160	220	O. M. Reed	"	17,	"
	21052	N. W. ¼	25			160	532	J. D. Godfrey	Aug.	15,	1882.
	13382	N. E. ¼	27			160	560	C. Mattaasson	June	20,	"
Deed	21444	S. E. ¼	27			160	720	P. P. Johnson	Aug.	30,	1882.
	13667	S. W. ¼	27			160	560	E. N. Bruland	June	20,	"
Deed	21445	N. W. ¼	27			160	344	P. P. Johnson	Aug.	30,	"
Deed	21446	N. E. ¼	29			160	480	do.	"	"	"
Deed	16309	S. E. ¼ (& E. ½ S. W. ¼ 17)	29			240	162	C. Swaim	Sept.	13,	1879.
	13389	S. W. ¼	29			160	440	G. Janson	June	22,	"
	13388	N. W. ¼	29			160	320	O. A. Thisthammer	"	22,	"
	20807	N. E. ¼	31			160	608	S. McPherson	Aug.	2,	1882.
	20808	S. E. ¼	31			160	532	"	"	"	"
	20809	S. W. ¼	31			160.40	457 14	"	"	"	"
	20810	N. W. ¼	31			161.20	535 99	"	"	"	"
	20803	N. E. ¼	33			160	608	J. M. Wiese	"	7,	"
Deed	21447	S. E. ¼	33			160	480	P. P. Johnson	Aug.	30,	1882.
Deed	21448	S. W. ¼	33			160	480	do.	"	"	"
Deed	15574	N. W. ¼	33			160	440	W. F. Leonard	May	8,	1879.
Deed	21449	N. E. ¼	35			160	400	P. P. Johnson	Aug.	30,	1882.
Deed	21450	S. E. ¼	35			160	480	do.	"	"	"
Deed	21451	S. W. ¼	35			160	480	do.	"	"	"
Deed	21452	N. W. ¼	35			160	400	do.	"	"	"
Deed	21453	N. E. ¼	1	22	5 W.	160.70	562 45	do.	"	"	"

*See S. E. ¼ 29.

Tax List No. — for the Year —. Lands of the Burlington & Missouri R. R. R. in Boone County, Nebraska—Continued.

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Consid.	Data if paid.	
								Name.	Date of sale.
Deed	21454	S. E. ¼	1			160	560	P. P. Johnson	Aug. 30, 1882.
Deed	21455	S. W. ¼	1			160	480	do.	" "
Deed	21456	N. W. ¼	1			162.10	486 30	do.	" "
Deed	21457	S. E. ¼	3			160	400	do.	" "
	19729	N. E. ¼	3			162.85	651 40	A. O. Finstrom	Oct. 8, 1881.
Deed	21458	S. W. ¼	3			160	480	P. P. Johnson	Aug. 30, 1882.
Deed	21459	N. W. ¼	3			162.95	570 32	"	" "
Deed	21460	N. E. ¼	5			163.35	490 05	"	" "
Deed	21461	N. W. ¼	5			163.65	490 95	"	" "
Deed	15944	S. E. ¼	5			160	385 44	M. L. & L. S. Co.	June 19, 1879.
	19546	S. W. ¼	5			160	720	C. G. Anderson	July 19, 1881.
Deed	21462	N. E. ¼	7			160	480	P. P. Johnson	Aug. 30, 1882.
Deed	21463	S. E. ¼	7			160	480	"	" "
Deed	21464	S. W. ¼	7			164.57	493 71	"	" "
	18732	N. W. ¼	7			164.11	574 38	G. W. Grimes	Aug. 30, 1880.
Deed	21465	N. E. ¼	9			160	560	P. P. Johnson	Aug. 30, 1882.
	16855	S. E. ¼	9			160	680	A. A. Kloster	Nov. 13, 1879.
Deed	21466	S. W. ¼	9			160	560	P. P. Johnson	Aug. 30, 1882.
Deed	21467	N. W. ¼	9			160	840	"	" "
Deed	21468	N. E. ¼	11			160	400	"	" "
Deed	21469	S. E. ¼	11			160	400	"	" "
Deed	21470	S. W. ¼	11			160	400	"	" "
Deed	21471	N. W. ¼	11			160	400	"	" "
183		Forward.							
	16865	N. E. ¼	13	22	5 W.	160	352	O. Nordin	Nov. 5, 1879.
	20549	N. ½ S. E. ¼	13			80	320	L. A. Stewart	June 17, 1882.
Deed	16888	S. ½ S. E. ¼	13			80	168	J. Young	Nov. 11, 1879.
Deed	21472	S. W. ¼	13			160	480	P. P. Johnson	Aug. 30, 1882.

Deed	21473	N. W. ¼	13		160	400	do.	"	"
Deed	21474	N. E. ¼	15		160	400	do.	"	"
	15528	S. E. ¼	15		160	448	C. A. Peterson	Ap'l	25, 1879.
Deed	17872	S. W. ¼	15		160	760	G. & E. Sanderson	M'ch	4, 1880.
	19547	N. W. ¼	15		160	720	N. P. Cederlind	July	19, 1881.
Deed	18545	N. E. ¼	17		160	512	H. Ellingson	June	9, 1880.
Deed	21475	S. E. ¼	17		160	400	P. P. Johnson	Aug.	30, 1882.
Deed	21476	S. W. ¼	17		160	480	do.	"	"
Deed	18472	N. W. ¼	17		160	476	J. E. Stenseth	June	9, 1880.
Deed	21477	N. E. ¼	19		160	400	P. P. Johnson	Aug.	30, 1882.
Deed	21478	S. E. ¼	19		160	400	do.	"	"
Deed	21479	S. W. ¼	19		163.78	409 75	do.	"	"
Deed	21480	N. W. ¼	19		165.26	495 78	do.	"	"
Deed	21481	N. E. ¼	21		160	480	do.	"	"
Deed	18473	S. E. ¼	21		160	416	J. E. Stenseth	June	9, 1880.
Deed	21482	S. W. ¼	21		160	400	P. P. Johnson	Aug.	30, 1882.
Deed	21483	N. W. ¼	21		160	480	do.	"	"
	20030	N. E. ¼	23		160	608	T. King	Feb.	6, "
Deed	17011	S. E. ¼	23		160	312	J. Young	Nov.	11, 1879.
	19497	S. W. ¼	23		160	960	C. G. E. Sestrom	July	19, 1881.
Deed	15396	N. W. ¼	23		160	448	C. F. Anderson	Ap'l	5, 1879.
	21484	N. E. ¼	25		160	400	P. P. Johnson	Aug.	30, 1882.
	21485	S. E. ¼	25		160	480	do.	"	"
	15278	S. W. ¼	25		160	512	J. Carlson	M'ch	4, 1879.
	15642	N. W. ¼	25		160	512	J. P. Bergstrom	"	4, 1879.
	20145	N. E. ¼	27		160	560	S. A. Johnson	Feb.	13, 1882.
	21486	S. E. ¼	27		160	400	P. P. Johnson	Aug.	30, 1882.
	21487	S. W. ¼	27		160	344	do.	"	"
	21488	N. W. ¼	27		160	400	do.	"	"
	21489	N. E. ¼	29		160	344	do.	"	"
	21490	S. E. ¼	29		160	344	do.	"	"
	21491	S. W. ¼	29		160	344	do.	"	"
	21492	N. W. ¼	29		160	344	do.	"	"
	14247	N. E. ¼	31		160	640	J. Hanson	Sept.	25, 1878.
	13547	S. E. ¼	31		160	640	N. L. Fulsass	July	8, 1878.
	20538	S. W. ¼	31		159.56	682 12	O. E. Olson	June	14, 1882.
	21493	N. W. ¼	31		160.92	482 76	P. P. Johnson	Aug.	30, 1882.
	21494	N. E. ¼	33		160	400	do.	"	"
	21495	S. E. ¼	33		160	344	do.	"	"

Tax List No. — for the Year —. Lands of the Burlington & Missouri R. R. R. in —— County—Continued.

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Consid.	Data if paid. Name.	Date of sale.
	21496	S. W. ¼	33			160	400	P. P. Johnson	Aug. 30, 1882.
	21497	N. W. ¼	33			160	344	do.	" "
	15429	N. ½ N. E. ¼	35			80	280	S. A. Hohingson	Apr. 11, 1879.
	15184	S. ½ N. E. ¼	35			80	280	"	Feb. 28, 1879.
	21498	S. E. ¼	35			160	400	P. P. Johnson	Aug. 30, 1882.
	21499	S. W. ¼	35			160	480	do.	" "
	21500	N. W. ¼	35			160	400	do.	" "
184		Forward.							
	15145	N. E. ¼	1	18	6 W.	160	245 28	N. L. & L. S. Co.	M'ch 1, 1879.
	15148	S. E. ¼	1			160	280 32	do.	" 1, "
	15147	S. W. ¼	1			160	280 32	do.	" 1, "
	15146	N. W. ¼	1			160	210 24	do.	" 1, "
	13877	S. W. ¼	3			160	245 28	N. L. & L. S. Co.	Aug. 15, 1878.
	17269	All	5			640	876	do.	Dec. 30, 1879.
Deed	17277	All	7			4,974.88	5,618 34	do.	" 30, "
		N. ½ & S. E. ¼	3						
		N. W. ¼ and S. ½	9						
		N. W. ¼ and S. S. ½	11						
		All	13						
		S. W. ¼	15						
		All	17						
		All	19						
		All	21						
		N. E. ¼	23						
Deed	17267	Lots 1 & 1	29			14.43	12 64	N. L. & L. S. Co.	Dec. 30, 1879.
	14440	N. E. ¼	11			160	350 40	N. L. & L. S. Co.	Oct. 14, 1878.
	14439	N. E. ¼	15			160	175 20	"	" 14, "
	14437	S. E. ¼	15			160	490 56	"	" 14, "

Deed	15259	S. E. ¼ (& p'ts 1, 19, 6)	23			240	256 96	"	M'ch 18, 1879.
	18562	S. ½ S. W. ¼	*23						
Deed	16069	E. ½ N. W. ¼	23			80	93 44	N. L. & L. S. Co.	Aug. 1, 1879.
Deed	17275	N. ½ & S. E. ¼	3	19	6 W.	4,471.53	4,454 45	"	Dec. 30, "
		N. E. ¼ & S. W. ¼	5						
		S. W. ¼	11						
		S. ½	13						
		All	15						
		E. ½	17						
		N. ½	19						
		All	21						
		N. E. ¼ and S. ½	29						
		N. ½	33						
		N. ½ & S. E. ¼	35						
Deed	20603	E. ½ S. E. ¼	1			80	540	G. R. Browder	July 1, 1882.
X	15259	S. W. ¼ S. E. ¼ & S. E. ¼ S. W. ¼.	†1				292	N. L. & L. S. Co.	Dec. 27, 1878.
Deeded	14869	S. W. ¼ S. W. ¼	1			200			
	14869	N. E.	1						
Deed	16639	S. W. ¼	3			160	116 80	do.	Oct. 14, 1879.
	13875	S. E. ¼	5			160	350 40	N. L. & L. S. Co.	Aug. 15, 1878.
Deed	14446	N. W. ¼	5			160.22	187 13	do.	Oct. 15, "
Deed	16940	All	7			3,170.76	2,753 90	N. L. & L. S. Co.	Nov. 21, 1879.
		West ½	17						
		All	31						
		(See also 1 & 3 & 11,19,7 W.)							
	15142	N. E. ¼	9			160	210 24	N. L. & L. S. Co.	M'ch 1, 1879.
	15149	S. E. ¼	9			160	175 20	do.	" 1, "
	13873	S. W. ¼	9			160	280 32	N. L. & L. S. Co.	Aug. 15, 1878.
Deed	15141	N. W. ¼	9			160	210 24	do.	M'ch 1, 1879.
			‡11						
	14875	S. E. ¼	11			160	245 28	N. L. & L. S. Co.	Dec. 28, 1878.
Deed	15505	N. W. ¼	11			160	210 24	do.	Ap'l 28, 1879.
185		Forward.							
Deed	16573	S. ½	19	19	6 W.	312.53	460 65	Neb. Land & Live Stock Co.	Oct. 14, 1879.
Deed	12111	N. E. ¼	23			160	240 00	Neb. Land & Live Stock Co.	Ap'l 2, 1878.

*1873. Reaw'g't.

†See S. E. ¼ 23, 18, 6.

‡See S. W. ¼ S. W. ¼.

Tax List No. —for the Year —. Lands of the Burlington & Missouri R. R. R. in —— County—Continued.

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Consid.	Data if paid.	
								Name.	Date.
Deed	12112	S. E. ¼	23			160	206 40	Neb. Land & Live Stock Co.	Ap'l 2, 1878.
Deed	12113	S. W. ¼	23			160	240 00	" "	" "
Deed	12114	N. W. ¼	23			160	206 40	" "	" "
Deed	12107	N. E. ¼	25			160	206 40	" "	" "
Deed	12108	S. E. ¼	25			160	206 40	" "	" "
Deed	12109	S. W. ¼	25			160	206 40	" "	" "
Deed	12110	N. W. ¼	25			160	206 40	" "	" "
Deed	17268	N. ½ & S. W. ¼	27			480	595 68	" "	Dec. 30, 1879.
Deed	15961	S. E. ¼	27			160	186 88	" "	July 5, 1879.
Deed	16763	S. W. ¼	33			160	303 68	" "	Nov. 5, 1879.
	14792	S. W. ¼	35			160	400 00	Freeman A. Bartholomew	Nov. 14, 1878.
	15558	N. E. ¼	1	20	6 W.	163.39	490 17	John Carrigan	May 5, 1879.
	17121	W. ½	1	}		485.67	980 47	George T. Williams	Dec. 17, 1879.
		N. W. ¼	11	}					
	18262	N. E. ¼	3			165.42	661 68	Wm. B. Johnson	Feb. 14, 1880.
	18729	S. E. ¼	3			160	560 00	Christian Bestman	Aug. 30, 1880.
	20663	S. W. ¼	3			160	1,152 00	B. E. Jackson	June 6, 1882.
Deed	15937	N. W. ¼	3			167.50	366 82	Neb. Land & Live Stock Co.	June 19, 1879.
	21501	N. E. ¼	5			173.72	434 30	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
	21502	S. E. ¼	5			160	480 00	" "	" "
	21503	S. W. ¼	5			160	344 00	" "	" "
	21504	N. W. ¼	5			174.92	376 07	" "	" "
Deed	17403	N. E. ¼	9			160	210 24	Neb. Land & Live Stock Co.	July 1, 1878.
	17404	S. E. ¼	9			160	175 20	" "	" "
	20781	N. E. ¼	11			160	480 00	W. W. Bilger	July 29, 1882.
Deed	21505	S. E. ¼	11			160	560 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
Deed	15864	S. W. ¼	11			160	163 52	Neb. Land & Live Stock Co.	June 19, 1879.
	16153	S. W. ¼	13			160	448 00	Samuel C. Weston	Aug. 16, 1879.
	18344	N. W. ¼	13			160	560 00	John V. Griswold	May 17, 1880.

Deed	13443	N. ½ N. E. ¼	15			80.00	175 20	Neb. Land & Live Stock Co.	Jluy 1, 1878.
	14045	S. E. ¼ N. E. ¼ & N. E. ¼ S. E. ¼.	15			80	166 44	" "	Sept. 7, 1878.
Deed	15507	W. ½ N. W. ¼	19			67.58	103 60	Neb. Land & Live Stock Co.	M'ch 5, 1879.
	13872	N. W. ¼	21			160.00	280 32	Neb. Land & Live Stock Co.	Aug. 15, 1878.
	13612	N. ½ N. E. ¼ & S. E. ¼ N. E. ¼.	23			120.00	360 00	Robert Hare	June 22, 1878.
Deed	14044	N. E. ¼ S. E. ¼	23			40.00	43 80	Neb. Land & Live Stock Co.	Sept. 7, 1878.
	21506	S. E. ¼	25			160.00	840 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
	20708	S. ½ S. W. ¼	25			80	570 00	C. W. Culver	June 30, 1882.
Deed	15582	E. ½ S. W. ¼ & S. W. ¼ S. W. ¼.	27			120	210 24	Neb. Land & Live Stock Co.	M'ch 1, 1879.
Deed	15583	N. W. ¼ S. W. ¼	27			40	70 08	" "	" "
Deed	20712	All	29			640	1,620 00	John Peters	July 25, 1882.
Deed	18733	N. E. ¼	31			160	384 00	Paul G. Reissen	Aug. 30, 1880.
	20801	S. E. ¼	31			160	380 00	Henry W. Allen	July 28, 1882.
	20799	S. W. ¼	31			149.60	497 42	"	" "
Deed	18730	E. ½ N. W. ¼	31			80	288 00	Paul Reissen	Aug. 30, 1880.
Deed	15606	W. ½ N. W. ¼	31			69.12	165 89	John Drake	Apr. 29, 1879.
	16226	N. E. ¼	33			160	480 00	Ann S. Whipple	Aug. 16, "
	19791	S. E. ¼	33			160	456 00	Frank Barney	Nov. 5, 1881.
	19857	S. W. ¼	33			160	456 00	C. B. Nugent	Nov. 5, 1881.
	19819	N. W. ¼	33			160	532 00	Mrs. M. J. Randall	Nov. 5, 1881.
	13874	S. W. ¼	35			160	280 32	Neb. Land & Live Stock Co.	Aug. 15, 1878.
186		Forward.							
	17123	All N. W. ¼ & S. E. ¼ N. ½ & S. E. ¼ All	1 13 25 27	21	6 W.	2,081.48	3,874 86	George T. Williams	Dec. 17, 1879.
	20856	E. ½	3			322.07	1,070 88	W. J. Wagoner	Aug. 11, 1882.
	20422	S. W. ¼	3			160	532 00	B. T. O. Hubbard	May 1, 1882.
	20423	N. W. ¼	3			161.89	538 28	" "	" "
	21073	N. E. ¼	5			161.06	535 53	Chas. H. Meier	July 15, 1882.
	20858	S. E. ¼	5			160	456 00	W. J. Wagoner	Aug. 11, 1882.
	20280	S. W. ¼	5			160	560 00	Friedrich Hutter	M'ch 25, 1882.
	20347	N. W. ¼	5			160.06	560 21	Charles J. Tripp	" "
	20857	N. E. ¼	7			160.00	532 00	W. J. Wagoner	Aug. 11, 1882.
	19523	N. ½ S. E. ¼	7			80	360 00	William McEwen	July 27, 1881.

Tax List No. — for the Year —. Lands of the Burlington & Missouri R. R. R. in —— County—Continued.

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Consid.	Data if paid. Name.	Date of sale.
	20683	S. ½ S. E. ¼	7			80	360 00	Edgar S. Miller	July 13, 1882.
	20859	S. W. ¼	7			157.38	472 14	James Boots	Aug. 11, 1882.
	20855	N. W. ¼	7			157.34	373 68	W. J. Wagoner	" "
	20831	N. E. ¼	9			160.00	532 00	Jaco Miller and Peyton Roberts	June 14, 1882.
	20828	S. E. ¼	9			160	532 00	" "	" "
	20829	S. W. ¼	9			160	532 00	" "	" "
	20830	N. W. ¼	9			160	456 00	" "	" "
	20847	E. ½	11			320	1,008 00	Lorenzo Bennett	Aug. 9, "
	13871	S. W. ¼	11			160	280 32	Neb. Land & Live Stock Co.	Aug. 15, 1878.
	20848	N. W. ¼	11			160	576 00	Lorenzo Bennett	Aug. 9, 1882.
	21507	N. E. ¼	13			160	480 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
	21508	S. W. ¼	13			160	480 00	" "	" "
	19563	N. E. ¼	15			160	560 00	F. C. Bissell	Aug. 11, 1881.
Deed	19562	S. E. ¼	15			160	576 00	" "	" "
	21509	S. W. ¼	15			160	400 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882
	21510	N. W. ¼	15			160	480 00	" "	" "
	18706	N. E. ¼	17			160	630 00	George Olmstead	Sept. 4, 1880.
	20703	S. E. ¼	17			160	560 00	M. L. Ryder	July 18, 1882.
	20815	S. W. ¼	17			160	456 00	Henry W. Allen	July 25, 1882.
	20682	N. W. ¼	17			160	640 00	Cornelius Cremin	July 13, 1882.
	21628	N. ½	19			320.03	800 08	H. R. Royston	Jan. 16, 1883.
	21627	S. ½	19			320.01	800 03	" "	" "
	20770	N. E. ¼	21			160	532 00	John A. Henderson	June 22, 1882.
Deed	17314	N. ½ S. E. ¼	21			80	144 00	Emogene N. Howard	Dec. 30, 1879.
	17474	S. ½ S. E. ¼	21			80	280 00	Joseph Fisher	Dec. 29, 1879.
Deed	20876	S. W. ¼	21			160	504 00	Rob't and Wm. Gamble	Aug. 9, 1882.
	20798	N. W. ¼	21			160	432 00	Hattie N. Irvine	July 27, 1882.
Deed	12126	N. E. ¼	23			160.00	273 60	Neb. Land & Live Stock Co.	April 2, 1878.
Deed	12131	S. E. ¼	23			160	308 80	" " "	" "

	19820	S. W. ¼	23			160	608 00	Richard S. Arthurs	Oct. 13, 1881.
	20755	N. W. ¼	23			160	560 00	Wilhelm D. D. Eggers	July 8, 1882.
	15941	S. W. ¼	25			160	315 36	Neb. Land & Live Stock Co.	June 19, 1879.
Deed	17635	N. E. ¼	29			160	256 00	Ephraim A. Rogers	Jan. 31, 1880.
Deed	16863	S. E. ¼	29			160	108 00	Thornton C. Atwood	Nov. 8, 1879.
	21511	S. W. ¼	29			160	280 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
	21512	N. W. ¼	29			160	280 00	" "	" "
187		Forward							
	21513	N. E. ¼	31	21	6 W.	160.00	344 00	B. P. Johnson & J. R. Clark	Aug. 30, 1882.
	21514	S. E. ¼	31			160.00	280 00	" "	" "
	21515	S. W. ¼	31			160.01	280 02	" "	" "
	21516	N. W. ¼	31			160.03	280 05	" "	" "
Deed	15835	N. E. ¼	33			160	140 16	Neb. Land & Live Stock Co.	June 17, 1879.
	14425	S. E. ¼	33			160	560 00	Arthur Blynn	Oct. 15, 1878.
	21517	S. W. ¼	33			160	400 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
	21518	N. W. ¼	33			160	400 00	" "	" "
	13878	N. E. ¼	35			160	210 24	Neb. Land & Live Stock Co.	Aug. 15, 1878.
Deed	15938	S. E. ¼	35			160	210 24	" "	June 19, 1879.
Deed	17353	S. W. ¼	35			160	336 00	Royal R. Fisher	Dec. 31, 1879.
Deed	17483	N. W. ¼	35			160	288 00	Josephus Zimmerman	Oct. 17, 1879.
	20498	All	1	22	6 W.	640.00	2,584 00	Her Kreifels	May 8, 1882.
Deed	18910	N. E. ¼	3			161.31	645 24	Charles Koeing	Aug. 30, 1880.
Deed	20666	S. E. ¼	3			160.00	576 00	Hans F. Muchs	June 5, 1882.
Deed	20614	S. W. ¼	3			160.00	648 00	"	" "
	18731	N. W. ¼	3			160.73	703 19	Detlev Jochim Kahler	Aug. 30, 1880.
	20281	N. E. ¼	5			159.65	558 77	Nicolas Bagmet	April 5, 1882.
	20168	N. ½ S. E. ¼	5			80.00	320	Heinrich Kreizenbeck	M'ch 13, 1882.
	20169	S. ½ S. E. ¼	5			80.00	320	Heinrich Clemens	" "
Deed	17552	S. W. ¼	5			200.00	800	Royal R. Fisher	Jan'y 30, 1880.
	17686	N. ½ N. W. ¼ & S. E. ¼ N. W. ¼.	5			119.75	523 89	"	" "
	17552	S. W. ¼ N. W. ¼	5						
	19508	N. ½ N. E. ¼ & S. E. ¼ N. E. ¼.	7			120	600 00	August Bramer	June 28, 1881.
	20173	S. W. ¼ N. E. ¼	7			40	180 00	Nicholas Horn	M'ch 16, 1882.
	19383	N. ½ S. E. ¼	7			80	400 00	Bernhard Recker	M'ch 10, 1881.
	20150	S. ½ S. W. ¼	7			75.01	300 04	Anton J. Ahle	Jan'y 20, 1882.
	20482	N. ½ S. W. ¼	7			74.95	299 80	Caspar Forthaus	May 22, 1882.

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Tax List No. — for the Year —. Lands of the Burlington & Missouri R. R. R. in —— County—Continued.

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Consid.	Data if paid.	
								Name.	Date of sale.
	19316	S. ½ N. W. ¼	7	22	6 W.	74.89	337 00	Frank Chasann	May 10, 1881.
	19315	N. ½ N. W. ¼	7			74.83	336 74	Henry Vandenauker	May 10, 1881.
	20485	N. E. ¼	9			160.00	640 00	Jacob Kramer	May 22, 1882.
Deed	21519	S. E. ¼	9			160.00	400 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
Deed	21520	S. W. ¼	9			160.00	480 00	" "	" "
	20486	N. W. ¼	9			160.00	480 00	Anton Kremer	May 22, 1882.
Deed	20869	All	11			640	2,304 00	Charles S. Fletcher	June 9, 1882.
	20764	N. E. ¼	13			160	532 00	Jozef Planausky	June 30, 1882.
Deed	18515	S. E. ¼	13			160	512 00	H. K. Bo	June 9, 1880.
	20765	S. W. ¼	13			160	532 00	Jozef Hand	June 30, 1882.
	20766	N. W. ¼	13			160	608 00	"	" "
	20802	N. E. ¼	15			160	608 00	Gustav Theodor Waldener Lund	Aug. 7, 1882.
Deed	21521	S. E. ¼	15			160	480 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
	20692	S. W. ¼	15			160	640 00	Patrick Hussey	May 18, 1882.
Deed	21522	N. W. ¼	15			160	480 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
Deed	21208	N. E. ¼	17			160	504 00	Jas. B. Murry	" "
Deed	19277	S. E. ¼ & N. W. ¼	17			320	1,088 00	John Velder	April 25, 1881.
Deed	21209	S. W. ¼	17			160	504 00	Jas. B. Murry	Aug. 30, 1882.
Deed	16280	N. E. ¼	19			160	280 00	Johann Goossen	Sept. 4, 1879.
	19356	S. E. ¼	19			160	640 00	Johann Goossen	May 28, 1881.
Deed	16279	S. W. ¼	19			152.40	342 90	Johann Goossen	Sept. 4, 1879.
Deed	16276	N. W. ¼	19			151.20	302 40	Johann Goossen	Sept. 4, 1879.
188		Forward.							
Deed	21523	N. E. ¼	21	22	6 W.	160	400 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
Deed	21524	S. E. ¼	21			160	400 00	" "	" "
	20897	S. W. ¼	21			160	532 00	Gustav Becker	July 8, 1882.
	19742	N. W. ¼	21			160	640 00	Henry Whipperman	Oct. 1, 1881.

	20837	N. E. ¼	23			160	576 00	Wilhelm Schmutz	Aug. 10, 1882.
Deed	20994	S. E. ¼	23			160	532 00	Ferdinand Haak	Aug. 14, 1882.
Deed	20616	S. W. ¼	23			160	576 00	Hans F. Muhs	June 5, 1882.
Deed	21525	N. W. ¼	23			160	480 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
	20599	All	25			640	2131 20	Tennis S. Hamlin	June 20, 1882.
	20884	N. E. ¼	27			160	532 00	John C. F. Brockmann	Aug. 18, 1882.
	20804	S. E. ¼	27			160	504 00	Gustav Paulsen	Aug. 7, 1882.
	20845	S. W. ¼	27			160	532 00	Herman F. Friethold	Aug. 13, 1882.
Deed	20615	N. W. ¼	27			160	648 00	Hans F. Muhs	June 5, 1882.
	17881	N. ½ N. E. ¼	29			80	400 00	Homer D. Wager	M'ch 10, 1880.
	21526	S. E. ¼	29			160	400 00	P. P. Johnson &. J. R. Clark	Aug. 30, 1882.
Deed	21210	N. W. ¼	29			160	432 00	Jas. B. Murray	" "
Deed	21211	S. W. ¼	29			160	432 00	" "	" "
Deed	17312	N. E. ¼	31			160	200 00	Johan Regier	Dec. 29, 1879.
	21527	S. E. ¼	31			160.00	344 00	P. P. Johnson & J. R. Clark	Aug. 30, 1882.
Deed	21212	S. W. ¼	31			157.22	424 50	Jas. B. Murray	Aug. 30, 1882.
	21528	N. E. ¼	33			160.00	400 00	P. P. Johnson & J. R. Clark	" "
	21529	S. E. ¼	33			160.00	400 00	" "	" "
	21530	S. W. ¼	33			160.00	344 00	" "	" "
	20760	N. W. ¼	33			160	504 00	F. W. Frietholt	July 13, 1882.
	20860	N. E. ¼	35			160	640 00	W. S. Van Orsdal	Aug. 11, 1882.
	20861	S. E. ¼	35			160	560 00	James Van Orsdal	Aug. 11, 1882.
	20844	S. W. ¼	35			160	432 00	Emil N. J. Geisler	July 29, 1882.
	20862	N. W. ¼	35			160	560 00	R. Shaw Vau	Aug. 11, 1882.
		All	1	18	7 W.				
		N. E. ¼ and S. ½	3						
		N. W. ¼	9						
		All	11						
		All	13						
		S. ½ and N. W. ¼	15			4,682.92			
Deed	17274	W. ½	19			Deeded	4,657 95	Neb. Land & Live Stock Co.	Dec. 30, 1879.
		S. E. ¼	23						
		All	25						
		S. W. ¼ & S ½ N. W. ¼	27						
		W. ½	29						
		N. E. ¼	31						
Deed	16054	N. W. ¼	3			160	163 52	Neb. Land & Live Stock Co.	July 28, 1879.
Deed	12128	N. ½ N. E. ¼	5			80	240 00	Neb. Land & Live Stock Co.	April 2, 1878.
Deed	14870	S. ½ N. E. ¼	5			80	245 28	" "	Dec. 27, 1878.

Tax List No. — for the Year —. Lands of the Burlington & Missouri R. R. R. in —— County, Nebraska—Continued.

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Consid.	Data if paid. Name.	Data if paid. Date of sale.
Deed	12121	S. E. ¼	5	18	7 W.	160	513 60	Neb. Land & Live Stock Co.	April 2, 1878.
Deed	12122	N. ½ S. W. ¼	5			80	223 20	" "	" " "
Deed	12127	N. W. ¼	5			160	480 00	" "	" " "
	16416	E. ½	7						
Deed	16535	W. ½	7			308.80	247 97	Neb. Land & Live Stock Co.	Oct. 19, 1879.
	13445	N. E. ¼	9			160	350 40	Neb. Land & Live Stock Co.	July 1, 1878.
	13444	S. E. ¼	9			160	525 60	" "	" " "
	13446	S. W. ¼	9			160	455 52	" "	" " "
189		Forward.							
Deed	13447	N. E. ¼	15	18	7 W.	160	420 48	Neb. Land & Live Stock Co.	July 1, 1878.
Deed	16939	All	17			2,871.58	2,211 67	" "	Nov. 21, 1879.
		E. ½	19						
		N. ½ & S. W. ¼	21						
		E. ½	29						
		S. ½ & N. W. ¼	31						
		All	33						
Deed	13876	S. E. ¼	21			160	175 20	Neb. Land & Live Stock Co.	Aug. 15, 1878.
Deed	14442	S. ½ N. E. ¼	23			80	140 16	" "	Oct. 14, 1878.
	16940	All	1	19	7 W.				
		All	3						
		S. ½	11						
Deed	17276	All	5			2,944.18	2,477 44	Neb. Land & Live Stock Co.	Dec. 30, 1879.
		All	7						
		N. ½	11						
		All	13						
		N. E. ¼	29						
		S. ½ S. W. ¼	31						
		N. E. ¼ & S. ½	33						

		All	15							
		All	17							
		All	21							
Deed	16352	All	23			4,480.00	3,504 00	Neb. Land & Live Stock Co.	Sept. 17, 1879.	
		All	25							
		All	27							
		All	35							
	13449	N. E. ¼	19			160	490 56	Neb. Land & Live Stock Co.	July 1, 1878.	
Deed	14046	S. E. ¼	19			160	350 40	" "	Sept. 7, "	
Deed	13451	N. W. ¼	19			153.92	414 50	" "	July 1, "	
	20491	S. E. ¼	29			160	240 00	D. Eugene Thompson	May 27, 1882.	
Deed	16764	S. W. ¼	29			160	350 40	Neb. Land & Live Stock Co.	Nov. 5, 1879.	
Deed	13450	N. W. ¼	29			160	490 56	Neb. Land & Live Stock Co.	July 1, 1878.	
Deed	16012	N. W. ¼	33			160	93 44	" "	July 18, 1879.	
	20602	E. ½ N. E. ¼	1	20	7 W.	87.61	438 05	C. H. Millard	June 13, 1882.	
	20973	N. E. ¼	3			179.19	510 70	W. J. Wagner	Sept. 9, 1882.	
	20972	S. E. ¼	3			160	304 00	"	" "	
	20971	S. W. ¼	3			160.00	456 00	"	" "	
	20974	N. W. ¼	3			179.39	596 47	"	" "	
Deed	20557	N. E. ¼	5			177.08	637 49	Paul Reissen	June 3, 1882.	
Deed	16819	S. E. ¼	5			160.00	320 00	Normal L. Bowker	Nov. 4, 1879.	
Deed	20556	S. W. ¼	5			160	432 00	Paul Reissen	June 3, 1882.	
	20572	N. W. ¼	5			177.06	756 54	F. W. Strohbehn	June 3, 1882.	
	17984	N. E. ¼	7			160	480 00	Thomas Stevenson	Sept. 15, 1879.	
Deed	18995	S. E. ¼	7			160	612 00	Christian Haas	Nov. 13, 1880.	
	18994	S. W. ¼	7			151.40	514 76	"	" "	
	17444	N. W. ¼	7			151.80	759 00	Thomas Stevenson	Nov. 29, 1879.	
	20907	E. ½	9			320	760 00	W. J. Wagoner	Aug. 21, 1882.	
	20902	W. ½	9			320	912 00	"	" "	
	15939	N. E. ¼	11			160	245 28	Neb. Land & Live Stock Co.	June 19, 1879.	
Deed	16236	S. E. ¼	11			160	144 00	Jas. L. Diffenderfer	Aug. 30, 1879.	
Deed	18583	S. W. ¼	11			160	208 00	W. H. Morris	July 16, 1880.	
Deed	16554	N. W. ¼	11			160	144 00	Amos Sandercock	Oct. 1, 1879.	
189½		Forward.								
Deeded	16364	S. W. ¼	13	20	7 W.	160	144	M. G. Diffenderfer	Sept. 12, 1879.	
	20911	E. ½	15			320	912	I. Greenough	Aug. 21, 1882.	
	20910	W. ½	15			320	760	"	" "	
	18997	N. E. ¼	17			160	560	W. T. Byard	Nov. 13, 1880.	

Tax List No. — for the Year —. Lands of the Burlington & Missouri R. R. R. in —— County, Nebraska.—Continued.

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Consid.	Data if paid.	
								Name.	Date.
	15942	S. E. ¼	17	20	7 W.	160	280 32	N. L. & L. S. Co.	June 19, 1879.
	19291	S. W. ¼	17	———	———	160	760	C. Hass	Ap'l 13, 1881.
Deed	17122	N. W. ¼ (and S. E. ¼ 21 and S. W. ¼ 25 and S. E. ¼ 35)	17	———	———	640	1,276	G. T. Williams	Dec. 17, 1879.
Deed	21060	N. E. ¼	19	———	———	160	532	C. Volkney	Aug. 23, 1882.
	17774	E. ½ S. E. ¼	19	———	———	80	320	C. H. Thome	Feb. 21, 1880.
	17725	W. ½ S. E. ¼	19	———	———	80	320	R. D. Thome	" 21, 1880.
	20258	S. W. ¼	19	———	———	151.30	529 55	H. A. Goff	M'ch 27, 1882.
Deed	21059	N. W. ¼	19	———	———	150.70	429 50	C. Faulkner	Aug. 23, 1882.
	21013	N. E. ¼	21	———	———	160	532	A. S. Campbell	Sept. 23, "
	17041	S. W. ¼	21	———	———	160	640	S. C. Craig	Oct. 24, 1879.
	14441	N. W. ¼	21	———	———	160	350 40	N. L. & L. S. Co.	" 14, 1878.
	20912	N. E. ¼	23	———	———	160	456	I. Greenough	Aug. 21, 1882.
Deed	18121	S. E. ¼	23	———	———	160	448	I. E. Shreve	Ap'l 7, 1880.
	20913	S. W. ¼	23	———	———	160	456	I. Greenough	Aug. 21, 1882.
	20914	N. W. ¼	23	———	———	160	304	"	" "
	15945	S. E. ¼	25	———	———	160	245 28	N. L. & L. S. Co.	June 19, 1879.
	15940	N. W. ¼	25	———	———	160	280 32	do.	" 19, 1879.
Deed	20702	N. E. ¼	27	———	———	160	576	M. A. Pratt	July 20, 1822.
Deed	16481	S. E. ¼	27	———	———	160	432	C. R. Hinman	Sept. 17, 1879.
Deed	13427	S. W. ¼	27	———	———	160	303 68	N. L. & L. S. Co.	July 1, 1878.
Deed	16482	N. W. ¼	27	———	———	160	480	A. D. Hinman	Sept. 17, 1879.
	20582	N. E. ¼	29	———	———	160	560	W. L. Hoys	June 24, 1882.
	20909	S. W. ¼	29	———	———	160	456	I. Greenough	Aug. 21, "
	20900	N. W. ¼	29	———	———	160	480	P. W. Cokely	" 31, "
	20919	N. E. ¼	31	———	———	160	532	I. Greenough	" 21, "
	20918	S. E. ¼	31	———	———	160	380	"	" " "
	20917	S. W. ¼	31	———	———	151.50	575 70	"	" " "

	20916	N. W. ¼	31			151.30	431 20	"	" " "	
	20920	N. ½	33			320	912	"	" " "	
	20915	S. E. ¼	33			160	532	"	" " "	
	20908	S. W. ¼	33			160	532	"	" " "	
	16537	S. W. ¼	35			160	640	W. Kehl	Sept. 16, 1879.	
	16360	N. W. ¼	35			160	512	K. Siebert	" 18, 1879.	
Deed	15863	N. E. ¼	1	21	7 W.	160.09	163 61	Neb. L. & L. S. Co.	June 19, 1879.	
Deed	15865	S. E. ¼	1			160	163 52	do.	" 19, 1879.	
	16524	S. W. ¼	1			160	540	J. Potker	Oct. 4, 1879.	
	16278	N. W. ¼	1			160.29	576 97	J. Barg	Sept. 4, 1879.	
Deed	17246	N. ½	3			1,276.84	3,304 96	G. T. Williams	Dec. 31, 1879.	
Deed	17247	S. ½	3			320	864	Ions Coy	Dec. 31, 1879.	
	19604	N. W. ¼	5			160.76	458 17	H. Fitzhugh	Aug. 25, 1881.	
Deed	15738	E. ½	7			320	144	C. M. Ferguson	May 10, 1879.	
	19141	N. ½	9							
Deed	19956	S. E. ¼ { N. W. ¼ 15 / W. ½ 33 }	9			640	693 34	J. W. Hampton	Jan'y 4, 1882.	
Deed	15281	S. W. ¼	9			160	80	C. H. Gould	M'ch 21, 1879.	
	17929	N. E. ¼	11			160	640	Z. A. Williamson	M'ch 18, 1880.	
Deed	21249	E. ½ S. E. ¼	11			80	216	I. B. Murray	Sept. 8, 1882.	
Deeded	17549	E. ½ S. W. ¼	11			80	420	L. S. Warner	Jan. 8, 1880.	
Deeded	17550	N. W. ¼	11			160	420	do.	" 8, 1880.	
190		Forward.								
Deed	20853	N. E. ¼ & S. E. ¼	13	21	7 W.	320	912	W. J. Wagoner	Aug. 11, 1882.	
Deed	20800	S. W. ¼	13			160	480	H. W. Allen	July 28, "	
Deed	18934	N. W. ¼	13			160	480	A. D. Barker	Nov. 16, 1880.	
Deed	20707	E. ½	15			320	420	D. E. Thompson	July 24, 1882.	
Deed	11972	S. W. ¼	15			160	80	C. H. Gould	Ap'l 2, 1878.	
	19956	N. W. ¼	15							
Deed	19141	W. ½	17			957.40	478 70	G. F. McClelland	Jan. 14, 1881.	
Deed	18688	E. ½	19			320	208	R. W. Lee	Sept. 2, 1880.	
	19141	W. ½	19							
Deed	19957	N. ½	21			320	293 33	J. W. Hampton	Jan. 4, 1882.	
	16492	N. E. ¼	23			160	560	T. D. Horsman	July 30, 1879.	
	20852	S. E. ¼	23			160	480	W. J. Wagoner	Aug. 11, 1882.	
Deed	20077	S. W. ¼	23			160	150	J. A. McKay	Feb. 13, "	
	20854	N. W. ¼	23			160	380	W. J. Wagoner	Aug. 11, "	
	21711	N. E. ¼	25			160	304	R. Stan Vom	Jan. 28, 1883.	

Tax List No. — for the Year —. Lands of the Burlington & Missouri R. R. R. in —— County, Nebraska—Continued.

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Consid.	Data if paid.	
								Name.	Date of sale.
	21712	S. E. ¼	25	21	7 W.	160	304	R. Stan Vom	Jan. 28, 1883.
	18906	S. W. ¼	25			160	640	J. S. Holmes	Nov. 8, 1880.
	21710	N. W. ¼	25			160	608	R. Stan Vom	Jan. 28, 1883.
	17376	N. E. ¼	27			160	490	Nas. D. H. McAllister	Jan. 6, 1880.
	17377	S. E. ¼	27			160	280	do.	" 6, 1880.
	17143	S. W. ¼	27			160	560	C. Cooley	Dec. 17, 1879.
	20975	N. E. ¼	31			160	456	W. J. Wagoner	Sept. 9, 1882.
	20976	S. E. ¼	31			160	532	"	" "
	20977	S. W. ¼	31			154.94	455 83	"	" "
	21084	N. W. ¼	31			159.86	575 50	J. Kahl, Jr.	Aug. 19, 1882.
	22021	N. E. ¼	33			160	480	C. Williams	June 18, 1883.
	22066	S. E. ¼	33			160	480	E. L. Williams	" "
	19956	W. ½	33						
	15943	S. W. ¼	35			160	175 20	N. L. and L. S. Co.	June 19, 1879.
	16672	N. W. ¼	35			160	480	W. McLean	Sept. 30, "
	19267	E. ½ N. E. ¼	1	22	7 W.	79.95	399 75	N. Ottelle, Sr.	April 19, 1881.
	19269	W. ½ N. E. ¼	1			79.85	399 25	"	" "
	19220	E. ½ S. E. ¼	1			80	400	N. Penn	Ap'l 5, "
	19219	E. ½ S. W. ¼	1			80	400	H. Schulte	" 5, "
	21911	W. ½ S. W. ¼	1			80	400	H. Scheute	Ap'l 5, 1883.
	19433	N. W. ¼	1			159.40	797	H. Schafer	June 28, 1881.
Deed	21205	N. E. ¼	3			159.29	430 09	I. B. Murray	Aug. 30, 1882.
	20684	S. E. ¼	3			160	560	I. Ganiord	July 17, "
	18345	N. ½ S. W. ¼	3			80	280	F. Groum	May. 14, 1880.
	20866	S. ½ S. W. ¼	3			80	320	E. Weeks	Aug. 18, 1882.
Deed	21206	N. W. ¼	3			159.49	502 39	I. B. Murray	Aug. 30, 1882
	21088	N. E. ¼	7			160	360	W. Park	Oct. 16, "
	21027	S. E. ¼	7			160	400	S. H. Kimball	Sept. 7, "
Deed	20601	S. W. ¼	7			315	857 25	H. Wallen	June 24, "

Deed	20601	S. W. ¼	7			315	857 25	H. Wallen	June 24,	"
Deed	21320	N. W. ¼	7			153.80	230 70	J. McConniff	July 24, 1882.	
	20411	N. E. ¼	9			160	864	A. Gordon	May 5,	"
	20414	S. E. ¼	9			160	720	"	"	"
	20413	S. W. ¼	9			160	360	"	"	"
	20415	N. W. ¼	9			160	504	"	"	"
	20260	N. ½	11			320	1,296	I. Scholl	M'ch 22,	"
	20335	S. E. ¼	11			160	640	I. Lorang	Apr. 5,	"
	20412	S. W. ¼	11			160	576	A. Gordon	May 5,	"
191										
	17019	E. ½ N. E. ¼	13	22	7 W.	80	320	P. Braun	Nov. 25, 1879.	
	17313	W. ½ N. E. ¼	13			80	280	F. Jantzen	Dec. 29,	"
Deed	16275	S. E. ¼	13			160	440	F. Jantzen	Sept. 4,	"
Deed	15506	S. W. ¼	13			160	256 96	N. L. & L. S. Co.	Ap'l 28,	"
	19273	N. W. ¼	13			160	630	I. Goosen	" "	1881.
	19271	N. E. ¼	15			160	700	A. Overholtz	" 25,	"
	20429	S. E. ¼	15			160	800	I. Schlipp	May 13, 1882.	
	18317	S. W. ¼	15			160	640	I. Coolidge	Ap'l 17, 1880.	
	18622	N. W. ¼	15			160	720	D. "	July 16,	"
	20650	E. ½	17			320	864	R. & W. K. Gamble	June 24, 1882.	
	20195	S. W. ¼	17			160	640	R. W. Wilken	M'ch 18,	"
	20601	N. W. ¼	17							
	20709	N. E. ¼	19			160	380	W. Wood	June 24, 1882.	
Deed	20710	S. E. ¼	19			160	432	I. Ryder	" 19,	"
	19386	S. W. ¼	19			154.31	540 08	I. Whipple	" 24, 1881.	
	20886	N. W. ¼	19			160	532	E. B. Young	Aug. 2, 1882.	
	20965	N. E. ¼	21			160	480	W. Lick	Sept. 7,	"
	17017	E. ½ N. E. ¼	23			80	320	C. Regier	Nov. 27, 1879.	
	17018	W. ½ N. E. ¼	23			80	320	——do.——	" 27,	"
Deed	14445	S. E. ¼	23			160	233 60	N. L. & L. S. Co.	Oct. 15, 1878.	
	18799	N. ½ S. W. ¼	23			80	400	I. Woll	Sept. 28, 1880.	
	18798	S. ½ S. W. ¼	23			80	400	D. Nettleton	" 29,	"
	17186	S. ½ N. W. ¼	23			80	320	H. Thesman	Dec. 22, 1879.	
	17185	N. ½ N. W. ¼	23			80	320	D. Thesman	" 22,	"
	19989	N. E. ¼ N. E. ¼	25			40	400	I. Friesen	Jan. 24, 1882.	
Deed	16274	S. ½ N. E. ¼ & N. W. ¼ N. E. ¼.	25			120	330	J. Friesen	Sept. 4, 1879.	
Deed	16277	S. E. ¼	25			160	440	P. Numh	" 4,	"
	16523	S. W. ¼	25			160	704	G. Regier	Oct. 4,	"

Tax List No. — for the Year —. Lands of the Burlington & Missouri R. R. R. in —— County—Continued.

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Consid.	Data if paid. Name.	Date of sale.
Deed	14444	N. W. ¼	25	22	7 W.	160	280 32	N. L. & L. S. Co.	Oct. 15, 1878.
Deed	21199	N. E. ¼	27	———	———	160	504	J. B. Murray	Aug. 30, 1882.
Deed	21207	S. E. ¼	27	———	———	160	432	——do.	" 30, "
	19020	S. ½ S. W. ¼	27	———	———	80	280	I. F. Shekler	Feb. 6, 1880.
	21692	N. ½ S. W. ¼	27	———	———	80	400	W. Oeeny	Feb. 13, 1883.
	20291	N. W. ¼	27	———	———	160	480	E. S. Avery	Ap'l 10, 1882.
Deed	17246	S. ½	29	———	———	1,276.84	3,304 96	Geo. T. Williams	Dec. 31, 1879.
		All	33	———	———				
	19612	N. W. ¼	29	———	———	160	640	I. St Louis	Aug. 25, 1881.
	19607	N. E. ¼	31	———	———	160	560	R. H. Fitzhugh	" "
	19605	S. E. ¼	31	———	———	160	560	H. "	" "
Deed	19608	S. W. ¼	31	———	———	152.70	229 05	R. H. "	" "
	19606	N. W. ¼	31	———	———	153.82	265 20	" "	" "
	16864	N. E. ¼	35	———	———	160	640	A. Martens	Nov. 8, 1879.
	16751	S. W. ¼	35	———	———	160	720	J. Koop	Oct. 27, "
	16750	N. W. ¼	35	———	———	160	768	P. Hilbert	" 27, "
	17265	Fract'l	7	16	8 W.	414.24	670 26	N. L. & L. S. Co.	Dec. 30, "
	17264	Fract'l	19	16	8 "	405.64	390 38	——do.	" 30, "
	17266	do.	31	16	8 "	395.60	486 85	——do.	" 30, "
	17263	do.	7	17	8 "	577	491 65	——do.	" 30, "
	17262	do.	19	17	8 "	597.60	528 06	——do.	" 30, "
	17261	do.	31	17	8 "	605	1,052 30	——do.	" 30, "
192		Forward.							
Deed	17273	N. E. ¼ *	1	18	8 W.	2,716.64	3,243 20	N. L. & L. S. Co.	Dec. 30, 1879.
Deed	13452	S. E. ¼	1	———	———	160	280 32	——do.	July 1, 1878.
		W. ¼	1	———	———	4,150.34	3,309 82	——do.	Dec. 24, "
		All	3						
		All	5						

Deed	17190	All	19							
		All	29							
		All	31							
		All	33							
	17273	All *	7							
		N. W. ¼ *	25							
		W. ½	9							
		E. ½	9							
		S. W. ¼	11				5,120	5,536 32	N. L. & L. S. Co.	Sept. 17, 1879.
		All	13							
		All	15							
Deed	16353	All	17							
		N. E. ¼ & S. ½	21							
		All	23							
		N. E. ¼ & S. ½	25							
		All	27							
		N. ½ & S. W. ¼	35							
	16416	N. ½ & S. E. ¼	11				1,440	1,097 92	N. L. & L. S. Co.	Sept. 27, 1879.
Deed	13453	N. W. ¼	21				160	350 40	do.	July 1, 1878.
		All	1	19	8					
		E. ½	13							
		S. W. ¼	15							
		W. ½	25							
		All	3	19	8 W.		7,746.84	8,610 23	N. L. & L. S. Co.	Dec. 24, 1879.
		All Ex. N. ½ N. E. ¼	5							
		All	9							
		N. ½	11							
		N. ½ & S. E. ¼	15							
		S. W. ¼	17							
		All	19							
Deed	17189	All	21							
		N. ½	23							
		N. E. ¼	25							
		All	27							
		All	29							
		All	31							
		All	33							
		All	35							

* Add.

Tax List No. — for the Year —. Lands of the Burlington & Missouri R. R. R. in —— County—Continued.

	Contract number.	Description.	Sec.	T'w'p.	R'ng.	Acres.	Consid.	Data if paid. Name.	Date of sale.
	20983	N. ½ N. E. ¼	5	19	8 W.	80.36	572 57	W. J. Wagoner	Sept. 9, 1882.
Deed	13454	N. E. ¼	7	———	———	160	490 56	N. L. & L. S. Co.	July 1, 1878.
	13455	W. ½	7	———	———	299.44	918 08	do.	" 1, "
Deed	15731	S. E. ¼	11	———	———	160	280 32	N. L. & L. S. Co.	May 31, 1879.
Deed	15732	S. W. ¼	11	———	———	160	186 88	do.	" 31, "
Deed	15733	N. W. ¼	13	———	———	160	233 60	do.	" 31, "
Deed	16310	S. W. ¼	13	———	———	160	303 68	do.	Sept. 13, "
Deed	13456	N. E. ¼ & N. ½ S. E. ¼	17	———	———	240	770 88	do.	July 1, 1878.
	21295	S. ½ S. E. ¼	17	———	———	80	680	M. Keenan	Aug. 15, 1882.
	20554	N. W. ¼	17	———	———	160	1,280	I. Armstrong	June 17, "
193		Forward.							
Deed	13869	S. E. ¼	23	19	8 W.	160	490 56	N. L. & L. S. Co.	Aug. 15, 1878.
	13870	S. W. ¼	23	19	8 "	160	385 44	do.	" 15, "
	14438	S. E. ¼	25	———	———	160	525 60	do.	Oct. 14, "
	20633	N. E. ¼	1	20	8 "	176.26	586 06	W. W. More	May 15, 1882.
	21041	N. ½ S. E. ¼	1	———	———	80	252	A. L. Shurtleff	Oct. 2, 1882.
	17887	S. ½ S. E. ¼	1	———	———	80	320	M. K. Murphy	Feb. 2, 1880.
Deed	19007	S. W. ¼	1	———	———	160	560	E. Poppen	Nov. 13, "
	20978	N. W. ¼	1	———	———	176.30	586 20	W. J. Wagoner	Sept. 9, 1882.
	19807	N. E. ¼	3	———	———	173.27	576 12	L. Gromold	Oct. 24, 1881.
	19806	S. E. ¼	3	———	———	160	684	"	" "
	19950	W. ½	3	———	———	332.59	1,263 84	"	" "
Deed	19317	N. ½ & S. E. ¼	5	———	———	497.78	2,295 13	M. Cudaby	Nov. 16, 1880.
Deed	16208	S. W. ¼	5	———	———	160	800	Chas. Lamot	Aug. 25, 1879.
	20979	N. E. ¼	7	———	———	160	608	W. J. Wagoner	Sept. 9, 1882.
	20980	S. E. ¼	7	———	———	160	380	"	" "
	20981	S. W. ¼	7	———	———	144.20	479 47	"	" "
Deed	15771	N. W. ¼	7	———	———	143	643 50	W. L. Gale	May 24, 1879.

Deed	17461	N. E. ¼	9			160	480	C. Harter	Dec. 23,	"
Deed	18991	S. ½ & N. W. ¼	9			480	1,800	W. H. Alexander	Nov. 16,	1880.
	19808	N. E. ¼	11			160	800	H. Martens	Oct. 24,	1881.
	16112	S. W. ¼	11			160	560	P. Pierney	Aug. 5,	1879.
	19805	N. W. ¼	11			160	760	H. Hinge	Oct. 24,	1881.
	20553	N. E. ¼	13			160	532	F. C. T. Hahn	June 3,	1882.
	20931	S. E. ¼	13			160	532	A. Hass	Aug. 17,	"
	20776	N. W. ¼	13			160	532	I. Hill	July 12,	"
	20904	N. E. ¼	15			160	456	W. J. Wagoner	Aug. 21,	"
	20903	S. E. ¼	15			160	532	"	"	"
	21709	S. W. ¼	19			146.94	440 82	R. Shan Van	Feb. 19,	1883.
	21791	S. E. ¼	21			160	480	I. & W. A. Compton	Ap'l 5,	"
	20879	N. E. ¼	23			160	560	I. B. Blake	Aug. 16,	1882.
	20840	S. E. ¼	23			160	560	A. M. Lovis	" 12,	"
	20841	S. W. ¼	23			160	560	J. H. Riddle	" 12,	"
	20878	N. W. ¼	23			160	560	I. D. Watson	" 16,	"
	20901	E. ½	25			320	912	W. J. Wagoner	" 21,	"
	20906	N. W. ¼	25			160	380	"	" 21,	"
	20905	S. W. ¼	25			160	456	"	" 21,	"
	20922	E. ½	27			320	912	I. Greenough	" 21,	"
	21798	S. W. ¼	27			160	400	I. Boles	Ap'l 10,	1883.
	20987	N. E. ¼	29			160	304	W. J. Wagoner	Sept. 9,	1882.
	20986	S. E. ¼	29			160	380	"	"	"
	20985	S. W. ¼	29			160	380	"	"	"
	20984	N. W. ¼	29			160	380	"	"	"
	19705	N. E. ¼	31			160	1,120	S. Sillik	Oct. 1,	1881.
	19770	S. E. ¼	31			160	1,120	F. M. Sillik	"	"
	20537	S. W. ¼	31			148.42	864	J. F. Langerhn	June 3,	1882.
Deed	20519	N. W. ¼	31			147.10	794 34	"	"	"
	20921	E. ½	33			320	912	J. Greenough	Aug. 21,	"
Deed	20515	S. W. ¼	33			160	432	G. L. Patterson	May 27,	"
	20982	N. W. ¼	33			160	456	W. J. Wagoner	Sept. 9,	"
Deed	21001	N. E. ¼	35			160	576	H. Korn	Aug. 30,	1882.
Deed	18786	S. E. ¼	35			160	512	R. Lockhardt	Aug. 16,	1880.
	20843	S. W. ¼	35			160	720	F. Watts	" 5,	1882.
	20825	N. W. ¼	35			160	532	F. W. Reils	" 4,	"

194 "EXHIBIT C" (J. D. McFarland's Testimony, C. P. D.).

Memorandum of an agreement and contract made this 28th day of July, A. D. one thousand eight hundred and seventy-seven (1877), between the Burlington and Missouri River Railroad Company in Nebraska, by its president and directors, party of the first part, and Adam Smith, of Chicago, Illinois, his heirs or assigns, party of the second part, witnesseth:

The first party agrees, on certain conditions and at certain prices hereafter named, to sell to the second party such of the lands remaining unsold and unreserved in Boone county, Nebraska, on the first day of August, A. D. one thousand eight hundred and seventy-seven (1877), as he may select under the provisions for selection and reservation hereinafter set forth, said selection and reservation practically constituting an option in favor of the said second party, extending from certain dates hereinafter named and expiring December thirty-first, A. D. one thousand eight hundred and seventy-nine (1879).

The first party agrees to sell to the second party the first sixty-five thousand (65,000) acres of his selection at an average price for the whole body of unsold lands in Boone county of one dollar (1.00) per acre.

The average price of the whole body of unsold lands in Boone county on the first day of August, A. D. one thousand eight hundred and seventy-seven (1877), being one dollar and thirty-seven cents ($1.37) per acre, and the rate to the second party being an average of one dollar ($1.00) per acre, the party of the second part would be entitled to prices upon his first selection of sixty-five thousand (65,000) acres of seventy-three (73%) per cent. of the cash price of the first of August, A. D. one thousand eight hundred and seventy-seven.

195 The first party agrees to sell to the second party the remaining lands which he may select under his second selection, as hereinafter provided for, at an average price for the whole body of unsold lands in Boone county of one dollar and twenty-five cents ($1.25) per acre.

The average cash price of the whole body of unsold lands in Boone county on the first day of August, A. D. one thousand eight hundred and seventy-seven, being one dollar and thirty-seven ($1.37) cents per acre, and the rate to the second party being an average of one dollar and twenty-five cents ($1.25) per acre, the party of the second part would be entitled to prices upon his second selection of sixty-five thousand (65,000) acres of ninety-one (91 %) per cent. of the cost prices of the first of August, A. D. one thousand eight hundred and seventy-seven (1877).

The first party agrees that the second party shall have the privilege of purchasing any of the lands above mentioned, under the selections as hereinafter provided for, on the following terms of credit in lieu of cash terms:

The price under the said terms of credit to be an advance of fifty per cent. (50 %) upon the cost prices of the respective selections,

namely, eight (8) years' credit, four (4) per cent. interest; the interest to be paid annually in advance for the first three (3) years, and thereafter one fifth of the principal annually, with interest at four (4) per cent. on the remainder.

The second party is to have the above option of purchasing such of the lands in Boone county as he may select under the following conditions, "to wit:"

First. He can proceed at once to select and report to the general land office of the first party, at Lincoln, Nebraska, sixty-five thousand (65,000) acres of land, which the first party agrees to at once withdraw from the market and record upon their books as engaged to be sold to the said second party.

196 Second. The second party is to have the privilege of selecting a second sixty-five thousand (65,000) acres of land on or after the first day of January, A. D. one thousand eight hundred and seventy-eight (1878), and immediately upon due receipt of the said second selection by the party of the first part the party of the first part is to withdraw the said lands from the market and record them upon their books as engaged to be sold to the said second party.

Third. The second party is to have the privilege of selecting any additional lands in Boone county that he may desire in addition to the first two selections on or after the first day of July, A. D. one thousand eight hundred and seventy-eight, all selections to be absolutely closed by the thirty-first day of December, one thousand eight hundred and seventy-eight. Tracts not selected are to be subject to sale by the company at their regular rates, but no reservation of the above land can can be made in favor of other parties after the date of this agreement.

The second party agrees that the mere selection of the land gives him no right of possession, but that the absolute purchase from the railroad company, either for cash or on credit, shall be perfected before he takes possession thereof or puts any one in possession thereof.

The second party agrees, in making the selections as before stated, they shall be made in a body. The first sixty-five thousand (65,000) acres must be selected in some one half of the county, namely, in the north half, the south half, the east half, or the west half of the county.

The second party agrees, in addition to the payment to the first party of the prices on the lands aforesaid, to assume the responsibility for and the payment of the whole of the taxes which have been levied upon all the lands of the Burlington and Missouri

197 River Railroad Company in Nebraska in Boone county for the years eighteen hundred and seventy-three (1873), eighteen hundred and seventy-four (1874), eighteen hundred and seventy-five (1875), eighteen hundred and seventy-six (1876), eighteen hundred and seventy-seven (1877), and it is a part and portion of this agreement and one of the important considerations paid by the said second party that the said taxes shall be assumed and paid by the said second party; the payment or settlement of the said taxes to be

consummated on or about January the first, A. D. one thousand eight hundred and seventy-eight. The second party agrees, in addition to the payment of the prices and of the taxes upon all of the lands as before stated, to assume the responsibility for and to make payment of the taxes for the years eighteen hundred and seventy-eight (1878), eighteen hundred and seventy-nine (1879), upon all such lands as he may select under this agreement as hereinbefore provided for; the said taxes to be paid upon said selected lands whether the same be eventually purchased by him or not.

The second party agrees that a failure upon his part to meet the taxes of eighteen hundred and seventy-eight (1878) or eighteen hundred and seventy-nine (1879) upon any tract or tracts selected by him on or before the first day of August of the following year shall be deemed a relinquishment by the second party of his option upon such tract or tracts.

The second party agrees to devote himself to the sale and settlement of the lands selected, and agrees not to purchase nor deal in the lands of any other railroad company, except such tracts as lie alongside the line of his proposed wagon road from Columbus or Clarksville, on the Union Pacific railway, to Albion, the county-seat of Boone county; the purchase of said additional lands from all sources not to exceed ten thousand (10,000) acres.

198 The second party agrees that in reselling the land to be purchased from the first party under this agreement he will adopt no terms of credit longer than ten years, and that he will adopt no rate of interest lower than four (4) per cent. per annum, and that the prices at which he will resell the lands on terms of credit shall not be less than double the cash price paid to the first party for the respective tracts

The reservation of lands in favor of the second party and the continuation of the option as above are to be governed by the following condition:

By the first day of January, eighteen hundred and seventy-eight (1878), the second party is to have effected a complete legal settlement or payment of the taxes now outstanding upon all Burlington and Missouri River Railroad Company in Nebraska lands in Boone county for the years eighteen hundred and seventy-three (1873) to eighteen hundred and seventy-seven (1877), inclusive, as the legal settlement is to be in such course of progress as to be satisfactory to the first party.

By the first day of January, eighteen hundred and seventy-eight (1878), the second party shall have a graded wagon road of forty (40) to forty-five (45) miles in length, between Columbus or Clarksville, on the Union Pacific railroad, and Albion, in Boone county, one-fourth completed, if not hindered by injunctions or right-of-way difficulties, and in that event he shall use due diligence to overcome said difficulties.

By the first day of January, eighteen hundred and seventy-eight (1878), the second party shall also have established a nucleus for the settlement of the lands selected by the erection of the necessary

buildings upon a home farm, and by the erection of dwelling-houses upon at least five separate tracts of lands.

On condition of the above the reservation of lands selected and the option upon all the lands in Boone county shall be extended from January first to September first, eighteen hundred and seventy-eight (1878).

If by the first day of September, eighteen hundred and seventy-eight (1878), the graded wagon road above referred to shall have been completed to Albion, and if at least twenty (20) additional houses shall have been erected upon different tracts of the selected lands, then the performance of these conditions will entitle the second party to a continuation of his option to the first day of August, eighteen hundred and seventy-nine (1879), and the payment of the taxes upon the lands for the year 1878, selected and purchased as aforesaid, will entitle the second party to a further continuation of the option to December thirty-first, eighteen hundred and seventy-nine (1879).

The lands in township twenty (20), range five (5) west, and sections one (1), three (3), five (5), and nine (9), in township nineteen (19), range (5) west, having been contracted to be sold by the party of the first part to F. A. Beiyon and his people, are not covered by the conditions of this agreement, but such lands as may not be sold at the expiration of the said contract with F. A. Beiyon are to fall under the terms of this contract.

THE BURLINGTON AND MO. RIVER RAILROAD CO. IN NEBR.,
(S'g'd) By C. E. PERKINS, *V. President.*
ADAM SMITH.

Countersigned:
(S'g'd) A. E. TOUZALIN, *L. C.*

EXHIBIT D (T. M. Marquett's Testimony, C. P. D.).

Return of Taxable Lands in Manchester Precinct, in Boone County, Nebraska, as Assessed for the Year 1873.

Owner.	Part of section.	Sec.	T'wn'p.	R'ge.	Acres.	Value.
B. M. R. R. R.	N. E. ¼	1	19	5	160	480
Do.	N. W. ¼	1	19	5	160	489
Do.	South ½	1	"	"	320	960
Do.	N. E. ¼	3	"	"	164	492
200 Do.	E. ½ N. W. ¼	3	19	5	81	243
Do.	South ½	3	"	"	320	960
Do.	E. ½	5	"	"	320	960
Do.	W. ½ S. W. ¼	7	"	"	66	198
Harry Maricle	W. ½ S. E. ¼	7	"	"	49	147
Do.	E. ½ S. W. ¼	7	"	"	80	240
Martin Sterns	W. ½ S. E. ¼	8	"	"	80	240
Do.	E. ½ S. W. ¼	8	"	"	80	240
B. & M. R. R. R.	West ½	9	"	"	320	960
Do.		11	"	"	640	1,920
Do.		13	"	"	640	1,920
Do.		15	"	"	640	1,920

Return of Taxable Lands in Manchester Precinct, in Boone County—Continued.

	Owner.	Part of section.	Sec.	T'wn'p.	R'ge.	Acres.	Value.
	R. W. King	W. ½ N. E. ¼	17	19	5	80	240
	R. W. King	E. ½ N. W. ¼	17	"	"	80	240
	Augustus Mansfield	N. E. ¼	8	"	"	160	480
	B. & M. R. R. R.	S. E. ¼ of S. E. ¼	1	"	"	40	120
	Do.	N. E. ¼ of S. E. ¼	1	19	6	40	120
	Do.	S. ½ of S. E. ¼	1	"	"	80	240
	Do.	S. ½ of S. W. ¼	1	"	"	80	240
	Do.		3	"	"	640	1,920
	Do.		5	"	"	640	1,920
	Do.	N. W. ¼	7	"	"	150	450
	Do.	S. W. ¼	7	"	"	150	450
	Do.	East ½	7	"	"	320	960
	Do.		9	"	"	640	1,920
	Do.		11	"	"	640	1,920
	Do.		13	"	"	640	1,920
	Do.		15	"	"	640	1,920
	Do.		17	"	"	640	1,120
	Do.		1	19	7	640	1,920
	Do.		3	"	"	640	1,920
	Do.		5	"	"	640	1,920
	Do.	N. W. ¼	7	"	"	153	459
201	Do.	S. W. ¼	7	19	7	153	459
	Do.	East ½	7	19	7	320	960
	Do.		9	19	"	640	1,920
	Do.		11	19	"	640	1,920
	Do.		13	"	"	640	1,920
	Do.		15	"	"	640	1,920
	Do.		17	"	"	640	1,920
	Do.		1	19	8	640	1,920
	Do.		3	"	8	640	1,920
	Do.		5	"	"	640	1,920
	Do.	N. W. ¼	7	"	"	150	450
	Do.	S. W. ¼	7	"	"	150	450
	Do.	East ½	7	"	"	320	960
	Do.		9	"	"	640	1,920
	Do.		11	"	"	640	1,920
	Do.		13	"	"	640	1,920
	Do.		15	"	"	640	1,920
	Do.		17	"	"	640	1,920
	Do.		13	20	5	640	1,920
	Do.		15	"	"	640	1,970
	Do.		17	"	"	640	1,920
	Do.	N. W. ¼	19	"	"	145	435
	Do.	S. W. ¼	19	"	"	145	435
	Do.	East ½	19	"	"	320	960
	Do.		21	"	"	640	1,920
	Do.		23	"	"	640	1,920
	Do.		25	"	"	640	1,920
	Do.		27	"	"	640	1,920
	Do.	North ½	29	"	"	320	960
	Do.	S. W. ¼	29	"	"	160	480
	Do.	W. ½ S. E. ¼	29	"	"	80	240
202	Do.	N. ½ N. W. ¼	31	20	5	66	198
	Do.	N. ½ S. W. ¼	31	"	"	66	198
	Do.	N. E. ¼	31	"	"	160	480
	Do.	N. ½ S. E. ¼	31	"	"	80	240
	Do.	S. W. ¼	33	"	"	160	480
	Do.	East ½	33	20	5	320	960
	Do.		35	"	"	640	1,920

Return of Taxable Lands in Manchester Precinct, in Boone County—Continued.

	Owner.	Part of section.	Sec	T'wn'p.	R'ge.	Acres.	Value.
	B. & M. R. R. R.	N. ½ N. E. ¼	15	20	6	80	240
	Do.	S. E. ¼ N. E. ¼	15	"	"	40	120
	Do.	N. E. ¼ S. E. ¼	15	20	"	40	120
	Do.	W. ½ N. W. ¼	19	"	"	67	201
	Do.	W. ½ S. W. ¼	19	"	"	68	204
	Do.	S. E. ¼ S. W. ¼	19	"	"	40	120
	Do.	S. ½ S. E. ¼	19	"	"	80	240
	Do.		13	"	"	640	1,920
	Do.	N. W. ¼	21	"	"	160	480
	John Hammond	S. E. ¼	22	"	"	160	480
	Stephen D. Avery	S. W. ¼	22	"	"	160	480
	E. B. Rice	N. W. ¼	22	"	"		
	B. & M. R. R. R.	N. ½ N. E. ¼	23	"	"	80	240
	Do.	S. E. ¼ N. E. ¼	23	"	"	40	120
	Do.	N. E. ¼ S. E. ¼	23	"	"	40	120
	Do.	East ½	25	"	"	320	960
	Do.	E. ½ N. W. ¼	25	"	"	80	240
	Do.	S. ½ S. W. ¼	25	"	"	80	240
	Do.	S. W. ¼	27	"	"	160	480
	Do.		29	"	"	640	1,920
	Do.	N. W. ¼	31	"	"	149	447
	Do.	S. W. ¼	31	"	"	149	447
	Do.	East ½	31	"	"	320	960
	Do.		33	"	"	640	1,920
	Do.	S. W. ¼	35	"	"	160	480
203	Herman Hill	N. E. ¼	17	20	6	160	480
	Albert Dresser	S. ½ of S. E. and N. W. ¼ of S. E. ¼ & S. W. ¼ of N. E. ¼.	15	"	"	160	480
	B. & M. R. R. R.	S. W. ¼	13	20	7	160	480
	Do.		15	20	7	640	1,920
	Do.		17	"	"	640	1,920
	Do.	N. W. ¼	19	"	"	150	450
	Do.	S. W. ¼	19	20	"	150	450
	Do.	East ½	19	"	"	320	960
	Do.		21	20	"	640	1,920
	Do.		23	"	"	640	1,920
	Do.		25	20	7	640	1,920
	Do.		27	20	7	640	1,920
	Do.		29	"	"	640	1,920
	Do.	N. W. ¼	31	"	"	151	453
	Do.	S. W. ¼	31	"	"	151	453
	Do.	East ½	31	"	"	320	960
	Do.		33	"	"	640	1,920
	Do.		35	"	"	640	1,920
	Christian Marquette	S. E. ¼	13	"	"	160	480
	B. & M. R. R. R.		13	20	8	640	1,920
	Do.		15	"	"	640	1,920
	Do.		17	"	"	640	1,920
	Do.	N. W. ¼	19	"	"	147	441
	Do.	S. W. ¼	19	20	"	147	441
	Do.	East ½	19		"	320	960
	Do.		21	"	"	640	1,920
	Do.		23	"	"	640	1,920
	Do.		25	"	"	640	1,920
	Do.		27	"	"	640	1,920
	Do.		29	"	"	640	1,920
	Do.	N. W. ¼	31	"	"	147	441

Return of Taxable Lands in Manchester Precinct, in Boone County—Continued.

	Owner.	Part of section.	Sec.	T'wn'p.	R'ge.	Acres.	Value.
204	B. & M. R. R. R.	S. W. ¼	31	20	8	148	444
	Do.	East ½	31	"	"	320	960
	Do.		33	"	"	640	1,920
	Do.		35	"	"	640	1,920
	Total					48,085	144,225

Return of Taxable Lands in Beaver Precinct, in Boone County, Nebraska, as Assessed for the Year 1873.

	Owner.	Part of section.	Sec.	T'p.	R.	A.	Value.
	Union Pacific R. R.		1	18	5	640	1,920
	" "	South ½	3	"	"	320	960
	B. & M. R. R. R.		5	"	"	640	1,920
	Do.		7	"	"	640	1,920
	Union Pacific R. R.		9	"	"	640	1,920
	" "		11	"	"	640	1,920
	" "	North ½	13	"	"	320	960
	" "	S. W. ¼	13	"	"	136	408
	" "	S. E. ¼	13	"	"	135	405
	" "	North ½	15	"	"	320	960
	" "		17	"	"	640	1,920
	" "	North ½	19	"	"	320	960
	" "	S. E. ¼	19	"	"	142	426
	" "	S. W. ¼	19	"	"	141	423
	" "	N. ½	21	"	"	320	960
	" "	S. E. ¼	21	"	"	145	435
	" "	S. W. ¼	21	"	"	144	432
	" "	S. E. ¼	15	"	"	140	420
	" "	S. W. ¼	15	"	"	144	432
	B. & M. R. R. R.		1	18	6	640	1,920
	Do.		3	18	6	640	1,920
	Do.		5	18	6	640	1,920
	Do.		7	"	"	640	1,920
	Do.		9	"	"	640	1,920
205	Do.		11	18	6	640	1,920
	Do.		13	"	"	640	1,920
	Do.		15	"	"	640	1,920
	Do.		17	"	"	640	1,920
	Do.		19	"	"	640	1,920
	Do.		21	"	"	640	1,920
	Do.		23	"	"	640	1,920
	Do.		1	18	7	640	1,920
	Do.		3	"	"	640	1,920
	Do.		5	"	"	640	1,920
	Do.	N. W. ¼	7	"	"	154	462
	Do.	S. W. ¼	7	"	"	154	462
	Do.	East ½	7	"	"	320	960
	Do.		9	"	"	640	1,920
	Do.		11	18	7	640	1,920
	Do.		13	"	"	640	1,920
	Do.		15	"	"	640	1,920

Return of Taxable Lands in Beaver Precinct, in Boone County—Continued.

	Owner.	Part of section.	Sec.	Tp.	R.	A.	Value.
B. &	M. R. R. R.		17	18	7	640	1,920
	Do.	N. W. ¼	19	"	"	154	462
	Do.	S. W. ¼	19	"	"	154	462
	Do.	East ½	19	"	"	320	960
	Do.		21	"	"	640	1,920
	Do.		23	"	"	640	1,920
	Do.	North ½	25	"	"	320	960
	Do.	S. E. ¼	25	"	"	150	450
	Do.	S. W. ¼	25	"	"	148	444
	Do.		27	"	"	640	1,920
	Do.		29	"	"	640	1,920
	Do.	E. ½	31	"	"	320	960
	Do.	N. W. ¼	31	"	"	156	468
206	B. & M. R. R. R.	S. W. ¼	31	18	7	156	468
	Do.		33	"	"	640	1,920
	Do.		1	18	8	640	1,920
	Do.		3	"	"	640	1,920
	Do.		5	"	"	640	1,920
	Do.	N. W. ¼	7	"	"	158	474
	Do.	S. W. ¼	7	"	"	157	471
	Do.	E. ½	7	"	"	320	960
	Do.		9	"	"	640	1,920
	Do.		11	"	"	640	1,920
	Do.		13	"	"	640	1,920
	Do.		15	"	"	640	1,920
	Do.		17	"	"	640	1,920
	Do.	N. W. ¼	19	"	"	157	471
	Do.	S. W. ¼	19	"	"	157	471
	Do.	East ½	19	"	"	320	960
	Do.		21	"	"	640	1,920
	Do.		23	"	"	640	1,920
	Do.		25	"	"	640	1,920
	Do.		27	"	"	640	1,920
	Do.		29	18	8	640	1,920
	Do.		31	"	"	640	1,920
	Do.		33	"	"	640	1,920
	Do.		35	"	"	640	1,920
	Do.	E. ½	19	19	5	320	960
	Do.	W. ½	19	"	"	317	951
	Do.	S. W. ¼	21	"	"	160	480
	Do.		23	"	"	640	1,920
	Do.		25	"	"	640	1,920
	Do.		29	"	"	640	1,920
207	Do.	N. W. ¼	31	19	5	153	459
	Do.	S. W. ¼	31	19	5	153	459
	Do.	E. ½	31	"	"	320	960
	Do.	S. ½	33	"	"	320	960
	Do.	N. E. ¼	35	"	"	160	480
	Do.	E. ½ N. W. ¼	35	"	"	80	240
Union	Pacific R. R.	S. ½	35	"	"	320	1,280
B. &	M. R. R. R.	N. W.	19	19	6	150	450
	Do.	S. W.	19	"	"	150	450
	Do.	E. ½	19	"	"	320	960
	Do.		21	"	"	640	1,920
	Do.		23	"	"	640	1,920
	Do.		25	"	"	640	1,920
	Do.		27	"	"	640	1,920
	Do.		29	"	"	640	1,920
	Do.	N. W. ¼	31	"	"	153	459

Return of Taxable Lands in Beaver Precinct, in Boone County—Continued.

	Owner.	Part of sec.	Sec.	T'p.	R.	A.	Value.
	B. & M. R. R. R.	S. W. ¼	31	19	6	154	462
	Do.	E. ½	31	"	"	320	960
	Do.		33	"	"	640	1,920
	Do.		35	"	"	640	1,920
	Do.	N. W. ¼	19	19	7	154	462
	Do.	S. W. ¼	19	19	"	154	462
	Do.	E. ½	19	"	"	320	960
	Do.		21	"	"	640	1,920
	Do.		23	"	"	640	1,920
	Do.		25	"	"	640	1,920
	Do.		27	"	"	640	1,920
	Do.		29	"	"	640	1,920
	Do.	N. W. ¼	31	19	7	154	462
	Do.	S. W. ¼	31	"	"	154	462
	Do.	E. ½	31	"	"	320	960
208	Do.		33	19	7	640	1,920
	Do.		35	"	"	640	1,920
	Do.	N. W. ¼	19	19	8	153	459
	Do.	S. W. ¼	19	"	"	153	459
	Do.	E. ½ 4	19	"	"	320	960
	Do.		21	"	"	640	1,920
	Do.		23	"	"	640	1,920
	Do.		25	"	"	640	1,920
	Do.		27	"	"	640	1,920
	Do.		29	"	"	"	1,920
	Do.		31	"	"	640	1,920
	Do.		33	"	"	640	1,920
	Do.		35	"	"	640	1,920

Return of Taxable Lands in Oakland Precinct, in Boone County, Nebraska, as Assessed for the Year 1873.

	Owner.	Part of sec.	Sec.	T'p.	Range.	A.	V.
	B. & M. R. R. R.		1	20	5	640	1,280
	Do.		3	20	5	640	1,280
	Do.		5	20	5	640	1,280
	Do.	N. W. ¼	7	20	5	145	290
	Do.	S. W. ¼	7	20	"	145	290
	Do.	East ½	7	"	"	320	640
	Do.		9	"	"	640	1,280
	Do.		11	"	"	640	1,280
	Do.	N. E. ¼	1	20	6	163	407
	Do.	N. W. ¼	1	"	"	165	408
	Do.	S. ½	1	"	"	320	780
	Do.	N. E ¼	3	"	"	165	408
	Do.	N. W. ¼	3	"	"	168	410
	Do.	S. ½	3	"	"	320	800
209	Do.	N. E. ¼	5	20	6	175	432
	Do.	N. W. ¼	5	"	"	175	437
	Do.	S. ½	5	"	"	320	800
	Do.		9	"	"	640	1,600
	Do.		11	"	"	640	1,600

Return of Taxable Lands in Oakland Precinct, in Boone County—Continued.

	Owner.	Part of sec.	Sec.	Tp.	Range.	A.	V.
	B. & M. R. R. R.	N. E. ¼	3	20	7	179	447 50
	Do.	N. W. ¼	3	"	"	180	450
	Do.	S. ½	3	"	"	320	800
	Do.	N. E. ¼	5	"	"	177	442 50
	Do.	N. W. ¼	5	"	"	177	442 50
	Do.	S. ½	5	"	"	320	800 50
	Do.	N. W. ¼	7	20	"	152	380
	Do.	S. W. ¼	7	"	"	152	380
	Do.	E. ½	7	"	"	320	800
	Do.		9	"	"	640	1,600
	Do.		11	"	"	640	1,600
	Do.	N. E. ¼	1	20	8	175	350
	Do.	N. W. ¼	1	"	"	176	352
	Do.	S. ½ 4	1	"	"	320	640
	Do.	N. E. ¼	3	"	"	173	346
	Do.	N. W. ¼	3	"	"	172	344
	Do.	S. ½	3	"	"	320	640
	Do.	N. E. ¼	5	"	"	169	338
	Do.	N. W. ¼	5	"	"	170	340
	Do.	South ½	5	"	"	320	640
	Do.	N. W. ¼	7	20	8	143	286
	Do.	S. W. ¼	7	"	"	144	288
	Do.	East ½	7	"	"	320	644
	Do.		9	"	"	640	1,280
	Do.		11	"	"	640	1,280
	Do.		1	21	5	640	1,280
210	Do.		3	21	5	640	1,280
	Do.		5	21	5	640	1,280
	Do.		7	21	5	640	1,280
	Do.		9	21	"	640	1,280
	Do.	North ½	11	"	"	320	640
	Do.	S. E. ¼	11	"	"	160	320
	Do.	N. ½ of S. W. ¼	11	"	"	80	160
	Do.	S. E. ¼ of S. W.	11	"	"	40	80
	Do.	S. ½ S. E. ¼	13	"	"	80	160
	Do.	S. ½ S. W. ¼	13	"	"	80	160
	Do.	N. E. ¼ of N. E. ¼	15	"	"	40	80
	Do.	W. ½ N. E.	15	"	"	80	160
	Do.	N. W. ¼	15	"	"	160	320
	Do.	South ½	15	"	"	320	640
	Do.		17	"	"	640	1,280
	Do.		19	"	"	640	1,280
	Do.		21	"	"	640	1,280
	Do.		23	"	"	640	1,280
	Do.		25	"	"	640	1,280
	Do.		27	"	"	640	1,280
	Do.		29	"	"	640	1,280
	Do.		31	"	"	640	1,280
	Do.		33	"	"	640	1,280
	Do.		35	"	"	640	1,280
	Do.	All of	1	21	6	640	1,600
	Do.	All	3	21	6	640	1,600
	Do.	All	5	21	6	640	1,600
	Do.	All	7	"	"	640	1,600
	Do.	All	9	"	"	640	1,600
	Do.	All	11	"	"	640	1,600
211	Do.	All	13	21	6	640	1,600
	Do.	All	15	"	"	640	1,600
	Do.	All	17	"	"	640	1,600

Return of Taxable Lands in Oakland Precinct, in Boone County—Continued.

	Owner.	Part of sec.	Sec.	Tp.	Range.	A.	V.
	B & M. R. R. R.	All	19	21	6	640	1,600
	Do.	All	21	"	"	640	1,600
	Do.	All	23	"	"	640	1,600
	Do.	All	25	21	"	640	1,600
	Do.	All	27	"	"	640	1,600
	Do.	All	29	"	"	640	1,600
	Do.	All	31	"	"	640	1,600
	Do.	All	33	"	"	640	1,600
	Do.	All	35	"	"	640	1,600
	Do.	All	1	21	7	640	1,280
	Do.	All	3	21	7	640	1,280
	Do.	All	5	21	7	640	1,280
	Do.	All	7	21	7	629	*1,258
	Do.	"	9	21	"	640	1,280
	Do.	"	11	"	"	640	1,280
	Do.	"	13	"	"	640	1,280
	Do.	"	15	"	"	640	1,280
	Do.	"	17	"	"	640	1,280
	Do.	"	19	"	"	637	*1,274
	Do.	"	21	"	"	640	1,280
	Do.	"	23	"	"	640	1,280
	Do.	"	25	"	"	640	1,280
	Do.	"	27	"	"	640	1,280
	Do.	"	29	"	"	640	1,280
	Do.	"	31	"	"	640	1,280
	Do.	"	33	"	"	640	1,280
	Do.	"	35	"	"	640	1,280
	Do.	Fractional	1	22	5	642	1,284
212	Do.	Fractional	3	22	5	646	1,292
	Do.	Fractional	5	22	5	647	1,294
	Do.	Fractional	7	"	"	648	1,296
	Do.	Fractional	9	"	"	640	1,280
	Do.	"	11	"	"	640	1,280
	Do.	"	13	"	"	640	1,280
	Do.	"	15	"	"	640	1,280
	Do.	All of	17	22	5	640	1,280
	Do.	Fractional	19	22	5	649	1,298
	Do.	All of	21	22	5	640	1,280
	Do.	All	23	"	"	640	1,280
	Do.	"	25	"	"	640	1,280
	Do.	"	27	"	"	640	1,280
	Do.	All	29	"	"	640	1,280
	Do.	"	31	"	"	640	1,280
	Do.	"	33	"	"	640	1,280
	Do.	All	35	"	"	640	1,280
	Do.	"	1	22	6	640	1,280
	Do.	"	3	"	"	640	1,280
	Do.	"	5	22	6	640	1,280
	Do.	Fractional	7	"	"	619	1,238
	Do.	All of	9	"	"	640	1,280
	Do.	All	11	"	"	640	1,280
	Do.	"	13	"	"	640	1,280
	Do.	"	15	"	"	640	1,280
	Do.	"	17	"	"	640	1,280
	Do.	Fractional	19	"	"	623	1,246
	Do.	All of	21	"	"	640	1,280

* Fractional.

Return of Taxable Lands in Oakland Precinct, in Boone County—Continued.

	Owner.	Part of sec.	Sec.	T'p.	Range.	A.	V.
	B. & M. R. R. R.	"	23	"	"	640	1,280
	Do.	"	25	"	"	640	1,280
	Do.	"	27	"	"	640	1,280
	Do.	All	29	"	"	640	1,280
213	Do.	Fractional	31	22	6	633	1,266
	Do.	All of	33	"	"	640	1,280
	Do.	"	35	"	"	640	1,280
	Do.	All	1	22	7	640	1,280
	Do.	All	3	"	"	640	1,920
	Do.	"	5	"	"	640	1,280
	Do.	Fractional	7	"	"	678	1,256
	Do.	All of	9	"	"	640	1,280
	Do.	"	11	"	"	640	1,280
	Do.	"	13	"	"	640	1,280
	Do.	All	15	"	"	640	1,280
	Do.	" of	17	"	"	640	1,280
	Do.	Fractional	19	"	"	628	1,256
	Do.	All	21	"	"	640	1,780
	Do.	"	23	"	"	640	1,920
	Do.	"	27	"	"	640	1,280
	Do.	"	29	"	"	640	1,280
	Do.	Fractional	31	"	"	626	1,252
	Do.	All	33	"	"	640	1,280
	Do.	"	35	"	"	640	1,920

STATE OF NEBRASKA, } *ss:*
Boone County, }

I, John Peters, county clerk within and for Boone county and State of Nebraska, do hereby certify that the above and foregoing is a true, full, and complete transcript of the assessment-rolls for the different precincts of Boone county, Nebr., for the year 1873, showing the assessment of all the real estate in said county for said year, except town lots, as the said assessment-rolls were returned and filed by the different precinct assessors for said year; and I further certify that there are no assessors' oaths attached to said assessment-rolls,
nor are there any upon file; that I have made diligent search
214 for the same and cannot find any such assessors' oaths in this office for the year 1873.

Witness my hand and the seal of said county, at Albion, this 29th day of December, A. D. 1875.

[SEAL.]

JOHN PETER,
County Clerk,
By LORAN CLARK, *Deputy.*

Endorsed: Boone county assessment-rolls. Filed Oct. 6, 1884. Elmer D. Frank, clerk.

EXHIBIT E (T. M. Marquette's Testimony, C. P. D.).

Return of Taxable Lands in Manchester Precinct, in Boone County, Nebraska, as Assessed for the Year 1874.

	Owner.	Part of sec.	Sec.	T.	R.	A.	V.
	B. & M. R. R. R.	All	1	19	5	644	1,610 40
	Do.	E. ½ S. W. ¼	3	"	"	484	1,210 25
	Do.	E. ½ of N. W.	3	"	"	80	203 82
	Do.	East	5	"	"	320	802 47
	Do.	W. ½ S. W. ¼	7	"	"	66	166 72
	Do.	W. ½	9	"	"	320	800
	Do.	All	11	"	"	640	1,600
	Do.	"	13	"	"	640	1,600
	Do.	"	15	"	"	640	1,600
	Do.	"	13	20	5	640	1,600
	Do.	"	15	"	"	640	1,600
	Do.	"	17	"	"	640	1,600
	Do.	All	19	"	"	615	1,538 70
	Do.	All	21	"	"	640	1,600
	Do.	"	23	"	"	640	1,600
	Do.	"	25	"	"	640	1,600
	Do.	"	27	"	"	640	1,600
	Do.	W ½ S. W. ¼	29	"	"	480	1,200
	Do.	W. ½ of S. E. ¼	29	"	"	80	200
	Do.	N. ½	31	"	"	308	772 02
215	Do.	N. ½ S. E. ¼	31	"	"	80	200
	Do.	N. ½ S. W. ¼	74	"	"	74	185 12
	Do.	E. ½ S. W. ¼	33	20	50	480	1,200
	Do.	All	35	"	"	640	1,600
	Do.	N. ½ N. E. ¼ S. E. ¼ N. E. ¼.	1	19	6	119	299 50
	Do.	N. ½ S. E. ¼ S. W. ¼ S. E.	1	"	"	120	300
	Do.	S. ½ of S. W. ¼	1	19	"	80	200
	Do.	All	3	"	"	639	1,599
	Do.	All	5	"	"	640	1,601 44
	Do.	All	7	"	"	621	1,554 21
	Do.	"	9	"	"	640	1,600
	Do.	"	11	"	"	640	1,600
	Do.	All	13	"	"	640	1,600
	Do.	"	15	"	"	640	1,600
	Do.	"	17	"	"	640	1,600
	Do.	"	13	20	6	640	1,600
	Do.	N. ½ N. E. ¼ S. E. ¼ N. E. ¼.	15	20	6	120	300
	Do.	N. E. ¼ S. E. ¼	15	"	"	40	100
	Do.	S. ½ S. E. ¼	19	20	6	80	200
	Do.	S. ½ S. W. ¼ N. W. ¼ S. W. ¼.	19	"	"	108	260 62
	Do.	N. ½ N. W. ¼	19	"	"	67	168 95
	Do.	N. ½ N. E. ¼ S. E. ¼ N. E. ¼.	23	"	"	120	300
	Do.	N. W. ¼	21	"	"	160	400
	Do.	N. E. ¼ S. E. ¼	23	"	"	40	100
	Do.	E. ½	25	"	"	320	800
	Do.	S. ½ S. W. ¼	25	"	"	80	200
	Do.	E. ½ N. W. ¼	25	"	"	80	200
	Do.	S. W. ¼	27	"	"	160	400
	Do.	All	29	"	"	640	1,600
	Do.	"	31	"	"	618	1,547 05
	Do.	"	33	"	"	640	1,600
	Do.	S. W. ¼	35	"	"	160	400
	Do.	All	1	19	7	640	1,600

Return of Taxable Lands in Manchester Precinct, in Boone County—Continued.

	Owner.	Part of sec.	Sec.	T.	R.	A.	V.
	B. & M. R. R. R.	All	3	19	7	641	1,603
216	Do.	All	5	19	7	640	1,600 60
	Do.	"	7	"	"	626	1,566 30
	Do.	"	9	"	"	640	1,600
	Do.	"	11	19	7	640	1,600
	Do.	"	13	"	"	640	1,600
	Do.	"	15	"	"	640	1,600
	Do.	"	17	"	"	640	1,600
	Do.	S. W. ¼	13	20	7	160	400
	Do.	All	15	20	7	640	1,600
	Do.	"	17	"	"	640	1,600
	Do.	"	19	"	"	622	1,555
	Do.	"	21	"	"	640	1,600
	Do.	"	23	"	"	640	1,600
	Do.	W. ½ & S. E. ¼	25	"	"	480	1,200
	Do.	All	27	"	"	640	1,600
	Do.	"	29	"	"	640	1,600
		"	31	"	"	622	1,557
		"	33	"	"	640	1,600
		"	35	"	"	640	1,600
	B. & M. R. R. R.	"	1	19	8	641	1,604 20
	Do.	"	3	"	"	642	1,607 20
	Do.	"	5	"	"	640	1,601 60
	Do.	"	7	"	"	619	1,548 00
	Do.	"	9	"	"	640	1,600
	Do.	"	11	"	"	640	1,600
	Do.	"	13	"	"	640	1,600
	Do.	"	15	"	"	640	1,600
	Do.	"	17	"	"	640	1,600
	Do.	"	13	20	8	640	1,600
	Do.	"	15	"	"	640	1,600
	Do.	"	17	"	"	640	1,600
217	B. & M. R. R. R.	All of	19	20	8	614	1,535
	Do.	"	21	"	"	640	1,600
	Do.	"	23	"	"	640	1,600
	Do.	"	25	"	"	640	1,600
	Do.	"	27	"	"	640	1,600
	Do.	"	29	"	"	640	1,600
	Do.	"	31	"	"	615	1,538 80
	Do.	"	33	"	"	640	1,600
	Do.	"	35	"	"	640	1,600
	Haney Maricle	W. ½ S. E. ¼	7	19	5	49	147
	" "	E. ½ S. W. ¼	7	19	5	80	240
	Martin E. Stephens	W. ½ S. E. ¼	8	19	"	80	320
	" " "	E. ½ S. W. ¼	8	"	"	80	140
	Emma E. King	W. ½ N. E. ¼	17	"	"	80	240
	" " "	E. ½ N. W. ¼	17	"	"	80	240
	Augustus Mansfield	N. E. ¼	8	"	"	160	400
	Mrs. L. Harmon Knisely	S. E. ¼	22	20	6	160	640
	Augustus Mansfield	S. W. ¼	22	"	"	160	640
	E. R. Rice	N. W. ¼	22	"	"	160	400
	Herman Hill	N. E. ¼	17	"	"	160	480
	Albert Dresser	S. ½ S. E. ¼ N. W. ¼ S. E. ¼ & S. W. ¼ N. E. ¼.	15	"	"	160	480
	Christian Marquett	S. E. ¼	13	20	7	160	400
	Geo. B. Newberry	N. W. ¼	27	"	6	160	640
	John C. Lewis	S. ½ S. E. & S. ½ S. W. ¼.	12	19	7	160	400
	Julius M. Day	S. W. ¼	26	20	6	160	480
	Marcus J. Mattuson	S. E. ¼	27	20	6	160	560

Return of Taxable Lands in Manchester Precinct, in Boone County—Continued.

	Owner.	Part of sec.	Sec.	T.	R.	A.	V.
	Henry G. Myers	N. E. ¼	2	19	6	159	377
	Robert Wilson	N. E. ¼	25	20	7	160	400
	B. & M. R. R. R.	All of	1	21	5	640	900
	Do.	"	3	"	"	640	900
	Do.	"	5	21	"	640	900
218	Do.	All	7	21	5	640	900
	Do.	"	9	"	"	640	900
	Do.	N. ½	11	21	5	320	480
	Do.	S. E. ¼	11	21	5	160	240
	Do.	W. ½ S. W. ¼	11	"	"	80	120
	Do.	S. E. ¼ S. W. ¼	11	"	"	40	60
	Do.	S. ½ S. E. ¼	13	"	"	80	120
	Do.	S. ½ S. W. ¼	13	"	"	80	120
	Do.	N. E. ¼ N. E. ¼	15	"	"	40	60
	Do.	W. ½ N. E. ¼	15	"	"	80	120
	Do.	N. W. ¼	15	"	"	160	240
	Do.	S. ½	15	"	"	320	480
	Do.	All of	17	"	"	640	900
	Do.	"	19	"	"	640	900
	Do.	"	21	"	"	640	900
	Do.	"	23	"	"	640	900
	Do.		1	21	6	640	900
	Do.		3	"	"	640	900
	Do.		5	21	"	640	900
	Do.		7	21	6	640	900
	Do.		9	"	"	640	900
	Do.		11	"	"	640	900
	Do.		13	"	"	640	900
	Do.		17	"	"	640	900
	Do.		19	"	"	640	900
	Do.		21	"	"	640	900
	Do.		23	"	"	640	900
	Do.	All of	1	21	5	640	900
	Do.	"	3	21	"	640	900
	Do.	"	5	21	"	640	900
	Do.	"	7	"	"	640	900
219	Do.	All	9	21	5	640	900
	Do.	N. ½	11	"	"	320	480
	Do.	S. E. ¼	11	"	"	160	240
	Do.	W. ½ S. W. ¼	11	"	"	80	120
	Do.	S. E. ¼ S. W. ¼	11	"	"	40	60
	Do.	S. ½ S. E. ¼	13	"	"	80	120
	Do.	S. ½ S. W. ¼	13	"	"	80	120
	Do.	N. E. ¼ N. E. ¼	15	"	"	40	60
	Do.	W. ½ N. E. ¼	15	"	"	80	120
	Do.	N. W. ¼	15	"	"	160	240
	Do.	S. ½	15	"	"	320	480
	Do.	All of	17	"	"	640	900
	Do.	All of	19	"	"	640	900
	Do.	"	21	"	"	640	900
	Do.	"	23	"	"	640	900
	Do.	"	1	21	6	640	900
	Do.	All of	3	21	6	640	900
	Do.	All of	5	21	6	640	900
	Do.	All of	7	21	6	640	900
	Do.	All of	9	21	6	640	900
	Do.	All	11	"	"	640	900
	Do.	"	13	"	"	640	900
	Do.	All	15	"	"	640	900
	Do.	All	17	"	"	640	900
	Do.	All	19	"	"	640	900

Return of Taxable Lands in Manchester Precinct, in Boone County—Continued.

	Owner.	Part of sec.	Sec.	T.	R.	A.	V.
	B. & M. R. R. R.	All	21	21	6	640	900
	Do.	"	23	"	"	640	900
	Do.	"	1	21	7	640	1,920
	Do.	"	3	"	"	640	1,020
	Do.	"	5	"	"	640	800
	Do.	"	7	"	"	629	800
220	Do.	All of	9	21	7	640	800
	Do.	N. E. ¼ N. W. ¼ & E. ½ S. E. ¼ and E. ½ S. E. ¼ E. ½ S. W. ¼.	11	21	7	480	1,120
	Do.	All	13	21	7	640	900
	Do.	"	15	21	7	640	800
	Do.	"	17	21	7	640	800
	Do.	" frac.	19	"	"	637	800
	Do.	"	21	21	"	640	800
	Do.	"	23	"	"	640	800
	Do.	" frac.	1	22	5	642	904
	Do.	All	3	22	5	646	912
	Do.	All	5	22	5	647	914
	Do.	"	7	22	5	648	916
	Do.	"	9	"	"	640	900
	Do.	All	11	"	"	640	900
	Do.	"	13	"	"	640	900
	Do.	"	15	"	"	640	900
	Do.	"	17	"	"	640	900
	Do.	All frac.	19	"	"	649	918
	Do.	"	21	"	"	640	900
	Do.	"	23	"	"	640	900
	Do.	"	25	"	"	640	900
	Do.	"	27	"	"	640	900
	Do.	"	29	"	"	640	900
	Do.	"	31	"	"	640	900
	Do.	"	33	"	"	640	900
	Do.	All	35	"	"	640	900
	Do.	"	1	22	6	640	1,280
	Do.	"	3	"	"	640	1,280
221	Do.	All	5	22	6	640	1,780
	Do.	" frac.	7	"	"	619	1,238
	Do.	All	9	"	"	640	1,280
	Do.	All	11	"	"	640	1,280
	Do.	"	13	"	"	640	1,280
	Do.	"	15	"	"	640	1,280
	Do.	"	17	"	"	640	1,280
	Do.	All frac.	19	"	"	623	1,246
	Do.	All	21	"	"	640	1,280
	Do.	All	23	"	"	640	1,280
	Do.	All of	25	22	6	640	1,280
	Do.	"	27	"	"	640	1,280
	Do.	"	22	"	"	640	1,280
	Do.	" frac.	31	22	6	633	1,266
	Do.	All	33	"	"	640	1,280
	Do.	All	35	"	"	640	1,280
	Do.	All	1	22	7	640	1,200
	Do.	"	3	"	"	640	1,200
	Do.	"	5	"	"	640	1,200
	Do.	All frac.	7	"	"	628	1,200
	Do.	"	9	"	"	640	1,200
	Do.	"	11	"	"	640	1,200
	Do.	"	13	"	"	640	1,200
	Do.	"	15	"	"	640	1,200

Return of Taxable Lands in Manchester Precinct, in Boone County—Continued.

Owner.	Part of sec.	Sec.	T.	R.	A.	V.
B &. M. R. R. R.	All frac.	17	22	7	640	1,200
Do.	All frac.	19	"	"	628	1,200
Do.	All	21	"	"	640	1,200
Do.	"	23	"	"	640	1,200
Do.	"	25	"	"	640	1,920
Do.	"	27	"	"	640	960
222 Do.	All	29	22	7	640	960
Do.	All frac.	31	"	"	626	960
Do.	All	33	"	"	640	960
Do.	All	35	"	"	640	1,920
John Barry	S. ½ N. E. ¼, N. ½ S. E. ¼.	14	21	5	160	480
L. M. Gaylord	E. ½ N. E. ¼ & E. ½ S. E. ¼.	22	22	5	160	480

Return of Taxable Lands in Ashland Precinct, in Boone County, Nebr., as Assessed for the Year 1874.

Owner.	Part of section.	Sec.	T.	R.	A.	Value.
B. & M. R. R. R.	All	1	20	5	622	1,244 88
Do.	"	3	"	"	628	1,256 88
Do.	"	5	20	"	631	1,262 80
Do.	"	7	"	"	615	1,230 24
Do.	"	9	"	"	640	1,280
Do.	"	11	"	"	640	1,280
Do.	"	1	"	6	649	973 59
Do.	"	3	"	"	652	989 98
Do.	"	5	"	"	668	1,002 96
Do.	"	9	"	"	640	960
Do.	"	11	"	"	640	960
Do.	E. ½ N. E. ¼	1	20	7	87	262 83
Do.	All of	3	"	"	678	1,017 87
Do.	"	5	"	"	674	1,011 21
Do.	"	7	"	"	623	934 80
Do.	"	9	"	"	640	960
Do.	"	11	"	"	640	960
Do.	"	1	"	8	671	1,343 12
Do.	"	3	"	"	665	1,331 72
Do.	"	5	"	"	657	1,315 56
Do.	"	7	"	"	607	1,214 40
223 Do.	All	9	20	8	640	1,280
Do.	"	11	"	"	640	1,280
Do.	"	25	21	5	640	1,280
Do.	"	27	"	"	640	1,280
Do.	"	29	"	"	640	1,280
Do.	"	31	"	"	640	1,280
Do.	"	33	21	"	640	1,280
Do.	"	35	"	"	640	1,280
Do.	"	25	21	6	640	960
Do.	"	27	"	"	640	960
Do.	"	29	"	"	640	960
Do.	"	31	"	"	640	960
Do.	"	33	"	"	640	960
Do.	"	35	"	"	640	960
Do.	"	25	"	7	640	960
Do.	"	27	"	"	640	960

Return of Taxable Lands in Ashland Precinct, in Boone County—Continued.

Owner.	Part of section.	Sec.	T.	R.	A.	Value.
B. & M. R. R. R.	All	29	21	7	640	960
Do.	"	31	21	7	640	960
Do.	"	33	"	"	640	960
Do.	"	35	"	"	640	960
Thomas Lanktill	W. ½ N. E. ¼ & E. ½ N. W. ¼.	1	20	7	176	704

Return of Taxable Lands in Cedar Precinct, in Boone County, Nebraska, as Assessed for the Year 1874.

	Owner.	Part of sec.	Sec.	T.	R.	A.	V.	R.
	B. & M. R. R. R.	All of	1	18	7	640	125	800
	Do.	"	3	"	"	640	125	800
	Do.	"	5	"	"	640	300	1,920
	Do.	"	7	"	"	628	125	785
	Do.	"	9	"	"	640	300	1,920
	Do.	"	11	"	"	640	125	800
	Do.	"	13	18	"	640	125	800
	Do.	"	15	"	"	640	300	1,920
224	Do.	All	17	18	7	640	125	800
	Do.	"	19	"	"	629	125	786
	Do.	"	21	"	"	640	125	800
	Do.	"	23	"	"	640	300	1,920
	Do.	"	25	"	"	613	200	1,226
	Do.	"	27	"	"	640	300	1,920
	Do.	"	29	"	"	640	125	800
	Do.	"	31	"	"	628	125	785
	Do.	"	33	"	"	635	125	794
	Do.	"	19	19	7	628	125	785
	Do.	"	21	"	"	640	125	800
	Do.	"	23	"	"	640	125	800
	Do.	"	25	"	"	640	125	800
	Do.	"	27	"	"	640	125	800
	Do.	"	29	"	"	640	125	1,920
	Do.	"	31	"	"	679	250	1,663 40
	Do.	"	33	"	"	640	250	1,600
	Do.	"	35	"	"	640	125	800
	Do.	"	7	16	8	44	125	517 50
	Do.	"	19	16	8	405	125	506 25
	Do.	"	31	"	"	395	125	494 65
	Do.	"	7	17	8	577	125	721 25
	Do.	"	19	17	8	597	125	747 15
	Do.	"	31	"	"	594	125	743 40
	Do.	"	1	18	8	640	125	800
	Do.	"	3	18	8	640	125	800
	Do.	"	5	18	8	640	125	800
	Do.	"	7	"	"	634	125	792
	Do.	"	9	18	"	640	125	800
	Do.	"	11	"	"	640	125	800
225	Do.	"	13	18	8	640	125	800
	Do.	"	15	"	"	640	125	800
	Do.	"	17	"	"	640	125	800
	Do.	"	19	"	"	633	125	769 25
	Do.	"	21	"	"	640	125	800
	Do.	"	23	"	"	640	125	800
	Do.	"	25	"	"	640	125	800

Return of Taxable Lands in Cedar Precinct, in Boone County—Continued.

Owner.	Part of sec.	Sec.	T.	R.	A.	V.	R.
B. & M. R. R. R.	All	27	18	8	640	125	800
Do.	"	29	"	"	640	125	800
Do.	"	31	"	"	641	125	801 25
Do.	"	33	"	"	635	125	775 75
Do.	"	35	"	"	625	125	771 25
Do.	"	19	19	8	626	125	744 50
Do.	"	21	"	"	640	125	800
Do.	"	23	"	"	640	125	800
Do.	"	25	"	"	640	400	2,560
Do.	"	27	"	"	640	125	800
Do.	"	29	"	"	640	125	800
Do.	"	31	"	"	636	125	795
Do.	"	33	"	"	640	125	800
Do.	"	35	"	"	640	125	800
Charles L. Hill	N. E. ¼	22	"	"	160	300	483

Return af Taxable Lands in Beaver Precinct, in Boone County, Nebraska, as Assessed for the Year 1874.

Owner.	Part of sec.	Sec.	T.	R.	A.	V.
Union Pacific	All of	1	18	5	640	1,920
" "	South ½	3	"	"	320	800
B. & M. R. R. R.	All	5	"	"	640	1,280
B. & M. R. R. R.	"	7	"	"	638	1,276
226 Union Pacific R. R.	All	9	18	5	640	1,440
" "	"	11	18	"	640	1,400
Union Pacific R. R.	N. ½	13	"	"	320	960
" "	S. W. ¼	13	"	"	136	405
" "	S. E. ¼	13	"	"	135	330
" "	N. ½	15	"	"	320	640
" "	S. E. ¼	15	"	"	140	280
" "	S. W. ¼	15	"	"	144	288
" "	All of	17	"	"	640	1,280
" "	N. ½	19	"	"	320	640
" "	S. E. ¼	"	"	"	142	284
" "	S. W. ¼	19	"	"	141	282
" "	N. ½	21	"	"	320	640
" "	S. E. ¼	21	"	"	145	290
" "	S. W. ¼	21	"	"	144	288
B. & M. R. R. R.	All	23	19	5	640	1,280
Do.	"	25	19	"	640	1,280
Do.	"	19	"	"	617	1,234
Do.	S. W. ¼	21	"	"	160	480
Do.	All	29	"	"	640	1,600
Do.	"	31	"	"	626	1,252
Do.	S. ½	33	"	"	320	880
Do.	N. E. ¼	35	"	"	160	480
Do.	E. ½ N. W. ¼	35	"	"	80	240
Do.	All of	1	18	6	640	1,280
Do.	"	3	"	"	640	1,280
Do.	"	5	"	"	640	1,120
Do.	"	7	"	"	645	1,133
Do.	"	9	"	"	640	1,600
Do.	"	11	"	"	640	1,280
Do.	"	13	"	"	640	1,133
227 Do.	All	15	18	6	640	1,240

Return of Taxable Lands in Beaver Precinct, in Boone County—Continued.

Owner.	Part of sec.	Sec.	T.	R.	A.	V.
B. & M. R. R. R.	All	17	18	6	640	1,240
Do.	"	19	"	"	649	820
Do.	"	21	18	6	600	900
Do.	"	23	"	"	607	900
Do.	Lots 1 & 2	29	"	"	14	18
Do.	All	19	19	6	623	1,200
Do.	"	21	"	"	640	1,280
Do.	"	23	"	"	640	1,280
Do.	"	25	"	"	640	1,280
Do.	"	27	"	"	640	960
Do.	"	29	"	"	640	1,280
Do.	"	31	"	"	627	1,256
Do.	"	33	"	"	640	1,280
Do.	"	35	"	"	640	1,280
Lyman H. Baldwin	N. W. ¼	27	19	5	160	*5
Edward Dwyer	W. ½ S. E. ¼ & N. ½ S. W. ¼ of—	27	19	5	160	480
Arthur M. Jennings	N. W. ¼	12	18	5	160	480
Chas. E. Hardy	S. W. ¼	2	18	5	160	480
Lucien B. Alexander	N. E. ¼	2	"	"	160	480
Rob't Hardy	N. W. ¼	2	"	"	160	†380
A. T. Coquillard	S. ½	35	19	"	370	1,280
H. A. D. Bug	S. W. ¼ S. W. ¼	11	18	"	40	50
G. A. Boschel	S. E. ¼ S. W. ¼	11	"	"	40	‡50

*5 acres timber. †1 acre timber. ‡Charged to U. P. R. R.

STATE OF NEBRASKA, } ss:
Boone County, }

I, John Peters, county cl'k within and for Boone county, Nebr., do hereby certify that the above and foregoing is a true and correct transcript or copy of the assessment-rolls for said Boone county for the year 1874, showing the assessment of all the real estate in the different precincts in said Boone county for said year, except town lots, as the same were returned by the different assessors for said year; and I further certify that there are no assessors' oaths attached to said assessment-rolls nor are there any upon file in this office; that I have made diligent search for the same, but have been unable to find them.

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Witness my hand and the seal of said county, at Albion, this 29th day of December, A. D. 1875.

[SEAL.]

JOHN PETERS,
County Clerk,
By LORAN CLARK, *Dep.*

EXHIBIT F (T. M. Marquett's Testimony, C. P. D.).

Endorsed: 1874. Boone county assessment-rolls. Filed Oct. 6, 1884. Elmer D. Frank, clerk.

In the Circuit Court of the United States for the District of Nebraska.

At the adjourned Nov. term of said court, to wit, on the eighth day of March, 1878, the Honorable Elmer S. Dundy, judge, being present and presiding in said court, the following proceedings were had in the case of H. H. Hunnewell, plaintiff, *vs.* Board of County Commissioners of Boone County *et al.*, defendants, as appears of record on folio 405, Journal D, of said court:

H. H. HUNNEWELL
vs.
BOARD OF COUNTY COMMISSIONERS OF BOONE COUNTY *et al.* } 210, D.

And now comes as well the said plaintiff, by its attorneys, as the said defendant-, by their attorneys, and thereupon this action comes on for trial before the court upon the issues joined between the parties; on consideration whereof, the court do find the issue in favor of the plaintiff, and do find that the taxes set forth in said
229 petition of plaintiff are void, as in said petition the said plaintiff has alleged.

It is therefore ordered and adjudged that an injunction be, and the same is hereby, allowed as prayed for in said petition of plaintiff, and that the same is hereby made perpetual, and that the said defendants, The County Commissioners, and the treasurer of said county or their successors are hereby perpetually enjoined from collecting or in any way attempting to collect or in any way intermeddling with the taxes set forth in said petition, and that the successors in office of the said defendants be, and the same are hereby, perpetually enjoined from collecting or in any way intermeddling with said taxes; and it is further considered that the said plaintiff recover against the said defendants its costs in and about this suit in this behalf expended, taxed to be — dollars.

(S'g'd) ELMER S. DUNDY, *Judge.*

H. H. HUNNEWELL
vs.
THE BOARD OF CO. COMM'RS OF BOONE COUNTY *et al.* } 210, D.

These parties herein consenting thereto, it is ordered that J. M. Thurston, Esq., may make a showing to intervene herein on behalf of certain tax-payers of Boone county within 30 days from this date; and if said application appears to be well founded the judge of this court to make such order in vacation as may be thought proper in the premises.

UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

I, Watson B. Smith, clerk of the circuit court of the United States

for the district of Nebraska, certify that I have compared the above order of said court with the original order as it appears of
230 record on folio 405, Journal D, of said court, and that the same is a correct transcript thereof and the whole of said original order.

In testimony whereof I have caused the seal of said court to be affixed, at the city of Omaha, in said district, on the 3rd day of May, 1878.

[SEAL.] WATSON B. SMITH, *Clerk.*

Endorsed: No. 210, doc. D. United States circuit court for the district of Nebraska. H. H. Hunnewell *vs.* B'd Co. Commissioners of Boone County *et al.* Certified copy of journal entry. Filed Oct. 6, 1884. Elmer D. Frank, clerk.

EXHIBIT "G" (F. M. Marquett's Testimony, C. P. D.).

This is to certify to the following facts connected with the construction of a certain graded wagon road by the Nebraska Land and Live Stock Company and Adam Smith, and the bridging of said road from Albion, Boone county, to Columbus or Clarksville, on the Union Pacific railroad, as called for in the agreements of the said parties with the county:

1st. The said road and bridges were not completed in the time required by the contract, July 1st, 1878, but the work having been taken up by the B. & M. railroad in Nebraska, under their agreements to do so, and having now been completed by or through them, we do hereby accept from the B. & M. R. R. in Nebraska the said road and bridges and release them from all obligations in reference to said road and bridges, but look to the said company for the full carrying out of the immigration work for the settlement of the county and the sale of the railroad lands and the payment of taxes hereafter, as agreed upon by all parties.

2nd. The bridge across the Loup river having been erected as a toll bridge instead of a free bridge by the Nebr. Land and Live Stock Company, it is understood and agreed that the said bridge shall be kept in repair by said Nebr. Land and Live Stock Company while they continue to collect tolls thereon.

231 And the county hereby waives all claims they might have against the railroad company by reason of this being a toll bridge on receiving the sum of five hundred dollars, to be used for renewals and repairs on said road in the year 1879, the receipt of which said five hundred dollars is hereby acknowledged from the said Burlington and Missouri River Railroad Company.

EDWIN BROADBENT,
Chairman Co. Com'rs.
ROBERT CUMMINGS,
JAS. B. BARNES,
Co. Com'rs.

Attest: JOHN PETERS, *Co. Clerk.*

Received the above sum of five hundred dollars, as well as two hundred and thirty-nine $\frac{65}{100}$ dollars, for work done on said graded wagon road and bridges, as per my receipt delivered this 6th day of January, A. D. 1879.

S. P. BOLLMAN,
Treas. Boone County, Nebr.

Attest: JOHN PETERS,
County Clerk.

I, John Peters, county clerk of Boone county, Nebraska, do hereby certify that the above resolution is a true copy of the records of Boone county.

Witness my hand and official seal, at Albion, Nebraska, this 15th day of January, A. D. 1879.

[SEAL.] JOHN PETERS,
County Clerk.

Filed Oct. 6, 1884.

ELMER D. FRANK, *Clerk.*

EXHIBIT "H" (T. M. Marquett's Testimony, C. P. D.).

Resolved, That we hereby accept the graded wagon road and bridges contracted for July 18th, 1877, by the Nebr. Land and Live Stock Company and by Adam Smith, and we release the Nebraska Land and Live Stock Company from any further obligations in reference thereto, as we have this day already accepted the graded wagon — and bridges from the B. & M. R. R. in Nebraska and released them from this obligation in reference thereto.

I, John Peters, county clerk of Boone county, Nebraska
232 do hereby certify that the above resolution is a true copy of the records of Boone county, Nebr.

Witness my hand and official seal, at Albion, Nebr., this 15th day of January, A. D. 1879.

[SEAL.] JOHN PETERS,
County Clerk.

Filed Oct. 6, 1884.

ELMER D. FRANK, *Clerk.*

The whole of pages 233, 234, 235, and a part of page 236, to where the testimony of H. W. Lapping commences, are misplaced in this transcript, being a part of testimony of John Peters, and should have been placed next following page 529.

And also the said H. W. LAPPING, being about the age of 49 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said H. W. Lapping, and he did thereupon depose, testify, and say as follows:

By Mr. MARQUETT:

Int. 1. What is your name, age, and place of residence?

Ans. 1. H. W. Lapping; about forty-nine years old, and reside in Beaver precinct, Boone county, Nebraska.

Int. 2. How long have you resided in Boone county, Nebraska?

Ans. 2. It will be eleven years the 24th day of next October.

237 Int 3. Mr. Lapping, were you here in the spring of 1878?

Ans. 3. Yes, sir.

Int. 4. Do you recollect a meeting, or did you attend a meeting in the spring of 1878 in reference to the settlement of the taxes of the Burlington and Missouri River Railroad Company in Nebraska or Adam Smith?

Objected to as being incompetent and immaterial.

Ans. 4. Well, I attended one meeting here in Albion, but it don't seem to me as though it was in the spring, but still it might be.

Int. 5. About when was it?

Ans. 5. I would say it was along some time about this time of the year, but it might have been in June or May; but my impression is that it was in August or September; that is my impression now, at the present time.

Int. 6. What did the meeting purport to do that you attended—this meeting?

Ans. 6. Well, my impression is that it was to explain the action of the county commissioners and Adam Smith regarding this B. & M. land settlement.

Int. 7. B. & M. land tax settlement?

Ans. 7. Yes.

Int 8. Was there anything said about the taxes having been perpetually enjoined or cancelled; if so, what was said about that?

Ans. 8. I couldn't remember what was said—the language used—but generally it was that the taxes would be cancelled.

Int. 9. All of them?

Ans. 9. All of the taxes.

Int. 10. From 1873 up to 1877?

Ans. 10. Yes; 1878 taxes was to be paid; commencing at 1873 and run to 1878.

Mr. MILLER: "We object to all the testimony on this subject as incompetent and immaterial."

Int. 11. Was there anything said about these taxes being cancelled by agreement on both sides?

Ans. 11. I think there was.

Int. 12. If so, state what it was, as near as you can.

238 Objected to as being incompetent and immaterial.

Ans. 12. I can't remember any particular language that was used about it, but it was generally understood that they were cancelled.

Int. 13. By agreement?

Ans. 13. Yes; by agreement.

Int. 14. On both sides?
Ans. 14. Yes.

Cross-examination by Mr. MILLER:

Int. 1. Did you hear this agreement read?
Ans. 1. No, sir.
Int. 2. Did you hear anything about what was to be the consideration on the part of the railroad company for the cancelling of these taxes?
Ans. 2. Well, either at that time or before I had heard.
Int. 3. I mean at that time?
Ans. 3. I couldn't say whether it was at that time or not.
Int. 4. You was a resident in this county during all that time, were you not?
Ans. 4. Yes, sir.
Int. 5. And there was some dissatisfaction among the people, wasn't there, about the manner in which the taxes were cancelled?
Ans. 5. Yes, sir.
Int. 6. Well, a considerable dissatisfaction throughout the county, wasn't there?
Ans. 6. Well, no; I should say there was not.
Int. 7. Just a small faction?
Ans. 7. Yes, sir.
Int. 8. You say that it was generally understood that the taxes were to be cancelled?
Ans. 8. Yes, sir.
Int. 9. All the taxes for those years?
Ans. 9. Yes, sir.
Int. 10. Was it generally understood that the taxes were to be cancelled without any investigation as to whether they were
239 legal or illegal?
Ans. 10. I didn't understand anything about that.
Int. 11. Was it the general understanding of the people that the taxes were to be declared cancelled without any investigation by the court as to whether they were legal or illegal?
Ans. 11. Some time I had it explained to me how it was to be done, but what time that explanation was made I don't know, but I think that—didn't understand that there was any illegal taxes about it. That was my own impression—that there wasn't anything illegal about it.
Int. 12. Then your understanding at that time was that the commissioners had made a present of these taxes to the B. & M. Railroad Company?
Ans. 12. With the exception of what Adam Smith had agreed to do.
Int. 13. Did you know at that time that a decree of court had been entered cancelling and annulling all the taxes for those years?
Ans. 13. Well, I think I did.
Int. 14. Did you know at that time that the county commissioners had stipulated with the B. & M. Railroad Company consenting to a decree being entered in the United States court cancelling and an-

nulling all the taxes for those years without any investigation or inquiry on the part of the court as to their legality or illegalitiy?

Ans. 14. No; I didn't know anything about that—about the legal inquiry or anything of that kind. I knew they entered into a friendly lawsuit, but how that was managed I wasn't lawyer enough to know only as it was explained.

Int. 15. Who explained it to you?

Ans. 15. Adam Smith and what Mr. Touzalin said when he was here.

Redirect examination by Mr. MARQUETT:

Int. 1. What Adam Smith and Mr. Touzalin said was said
240 in the meeting publicly, wasn't it?

Ans. 1. What Mr. Touzalin said was said publicly. What Adam Smith said was said privately.

Int. 2. Were many of the people of this county there at this meeting?

Ans. 2. Yes, sir; a large number of the people.

Int. 3. It was well published, was it?

Objected to as being leading.

Ans. 3. I think it was.

Int. 4. The time and place where the meeting was to be held was generally known throughout the county, was it not?

Objected to as being leading.

Ans. 4. Yes, sir.

Recross-examination by Mr. MILLER:

Int. 1. Can't you remember what Mr. Touzalin said—his language?

Ans. 1. I think I can, some of it; perhaps not in his very words.

Int. 2. Well, what was it?

Ans. 2. He said that when real estate was in litigation neither party were liable for the taxes until after the litigation was settled; then the party whoever it fell to had the taxes to pay for, and the B. & M. Company could hold this land in litigation and not pay the taxes for years to come.

Redirect examination by Mr. MARQUETT:

Int. 1. Is that all he said?

Ans. 1. Oh, no; it wasn't near all, but I remember that more distinctly than any other part, because that was one thing that made me in favor of the settlement.

Int. 2. Well, that was after the settlement was made?

Ans. 2. After the settlement was made.

Int. 3. The litigation here referred to was with the United
241 States Government, wasn't it?

Ans. 3. I think so.

And also the said PEARSON D. SMITH, being about the age of 40 years and having been by me first cautioned and sworn to testify

the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Pearson D. Smith, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MARQUETT:

Int. 1. Mr. Smith, what is your age, name, and place of residence?

Ans. 1. I am about forty years old; my name is Pearson D. Smith, and I reside in Boone county.

Int. 2. How long have you resided in Boone county?

Ans. 2. I have been here with my family since July, 1878.

Int. 3. What relation are you to Adam Smith?

Ans. 3. I was his son.

Int. 4. You are the son of the Adam Smith that made the contract with the county commissioners in reference to the cancelling of the taxes on the Burlington & Missouri River Railroad Company's lands in Boone county?

Ans. 4. Yes.

Int. 5. Is Adam Smith still alive?

Ans. 5. He is not.

Int. 6. When did he die?

Ans. 6. He died in April, 1880.

Int. 7. Do you know anything about the work that was done under the contract made with the county commissioners in reference to the cancelling of the taxes of the B. & M. Railroad Company in this county?

Ans. 7. I do.

Int. 8. Do you know anything about the building of the wagon road from Albion to the Union Pacific railroad?

Ans. 8. I do; yes, sir.

242 Int. 9. When was that work completed—about when?

Ans. 9. I am under the impression that it was completed in the spring of 1879, but I am not positive; couldn't tell without referring to my memorandums at home.

Int. 10. Do you know what the whole of the work done on the road cost?

Ans. 10. I couldn't tell correctly.

Int. 11. Well, about what it cost?

Ans. 11. Judging from what we estimated that it would cost before we undertook it and our estimates afterwards, I should approximate it somewhere from seventeen to twenty thousand dollars. Of course, this is only approximate.

Int. 12. Mr. Smith, do you know anything about the contract which your father made, either for himself or for the Nebraska Land and Live Stock Company, in reference to the purchase of a lot of lands from the Burlington and Missouri River Railroad Company in Nebraska?

Ans. 12. I do, sir.

Int. 13. This was made in connection with the contract made with the county commissioners about doing this work, was it?

Ans. *14*. It was made after; yes, it was made in connection with that.

Int. 15. How many of the lands that you have got under the contract with the railroad company did you sell in the first two years and how many actual settlers did you put upon these lands?

Ans. 15. We sold, or was the means of selling, something over sixty thousand acres of these lands up to the 31st of December, 1879.

Int. 16. Well, now, how many actual settlers did you put upon these lands up till December, 1879?

Ans. 16. Our final settlement with the railroad was in December, 1879. Prior to that time my father and myself made an estimate and a calculation of the number of actual settlers and people that we had sold to, and it was over three hundred that we had
243 sold to, and it was over three hundred that we had sold to and brought into the county. As I remember now, it was three hundred and eighteen. I want to say here that we not only sold out lands, but in getting people into the county we located a good many that didn't buy—found homesteads and pre-emptions to get people to settle, as that was our entire business.

Int. 17. How many have you located on your own lands—that is, lands you purchased of the Burlington and Missouri River Railroad Company in Nebraska or the C., B. & Q.—since December 31st, 1879?

Objected to as being incompetent, immaterial, and irrelevant.

Ans. 17. I never have made an estimate of it, as the business has increased so rapidly after that; the county settled up so fast that we have about sold out all our lands to actual settlers since that time.

Int. 18. What else besides bringing these settlers onto the lands of the B. & M. have you done to settle up and bring taxable property into the county of Boone?

Ans. 18. The first thing we did when we came here we built a very expensive house and place for this country, with barns, stables, sheds, water-works attachments. We have broken, up to date, over five thousand acres of land in the county. We have on our home or farm—which was originally run with a view of showing settlers what could be done here, how to make money farming—we have two thousand acres under cultivation and have been running it ever since we came here. We first introduced—got seeds and gave them away here in the country—grass seeds—which demonstrated whether tame grass could be grown here; brought in many thousand dollars' worth of blooded stock with a view to improving the stock in the county; have had as many as nine thorough-bred stallions at one time on the place, which the farmers of the county were breeding to; have brought in at different times eighteen thorough-bred bulls; brought in a herd of Jerseys, thorough-breds;
244 have tried experiments with every seed that can be grown in this latitude; have employed and are now giving employment to large numbers of men; started the town of Cedar Rapids and improved that water-power there; have been the means of building the mill there, at a cost of over forty thousand dollars, and have

devoted our entire time and energies to developing this county and bringing taxable property into the county.

Int. 19. Was this wagon road from Albion to the Union Pacific railroad completed to the satisfaction of the commissioners of Boone county?

Objected to as being immaterial.

Ans. 19. It was about completed at one time, as we thought, according to our contract. The commissioners objected to it somewhat, and in order that they should be thoroughly satisfied they put one of their body as superintendent to complete the work, we agreeing to do it just as he directed it or, as occurred, with some bridges which were not considered satisfactory. They were taken out and we allowed them to have the bridges built as they wanted them built and we paid the bills, as I remember it now. It was finally completed to their satisfaction and accepted.

Int. 20. By the county commissioners?

Ans. 20. Yes, sir.

Int. 21. Mr. Smith, what, if any, experience had your father, Adam Smith, in buying large tracts of land and in settling it up prior to the time that he made this purchase of the Burlington and Missouri River Railroad Company in Nebraska? State in full what that experience was, if any.

Objected to as being incompetent, immaterial, and irrelevant.

Ans. 21. I think, in 1855 he purchased from the Illinois Central railroad forty-seven thousand acres of land, as I now remember the amount, one hundred miles south of Chicago on the Illinois Central railroad. It was mostly in the county of Iroquois. At
245 that time the Illinois Central Railroad had run to the land. There were less than six hundred people in the county. He went there and his family, as he has done here in Boone county, and lived—settled the land all up—paid all for it, and some few years afterward undertook this enterprise. While there he had a model farm of some two thousand acres, which was run with a view of showing the people how to farm and how to make money out of farming, as one inducement to bringing settlers. The commissioner of the Illinois Central railroad told me my father was the only man that bought a large tract of land from the railroad, went down and settled it up, and paid for it and carried it through. The land commissioner that he dealt with at the time he purchased these lands was afterwards United States land commissioner, and it was through strong letters from them—from the United States land commissioner and of the Illinois president, who had been connected with this road during the enterprise in Illinois, and had seen the whole operation there—it was through those letters and the contract or agreement that he had made here with the people of this county that he was enabled to make the purchase here at all.

Int. 22. The purchase from the Burlington and Missouri River Railroad Company?

Ans. 22. Yes, sir.

Cross-examination by Mr. MILLER:

Int. 1. You say, Mr. Smith, that it was only through this agreement that your father had made with the county commissioners of Boone county and the letters and recommendations that he had that he was enabled to purchase any of these lands from the B. & M. Company?

Ans. 1. I don't wish to put my answer in that way. I refer to his letters coming from the people who were acquainted with his enterprise in Illinois, and from whom he purchased his land,
246 *and from whom he purchased his land*, and his capabilities in this business of settling up a new country.

Int. 2. Then do you wish to be understood as saying that the matter of his settlement of the taxes in Boone county had nothing to do with his purchase of this land?

Ans. 2. I know nothing of my own knowledge.

Int. 3. Were you familiar with the contract made by your father with the B. & M. Railroad Company?

Ans. 3. I was at the time.

Int. 4. Was that contract in writing?

Ans. 4. Certainly.

Int. 5. Have you the contract?

Ans. 5. I have—yes, sir. I haven't it here; I have it in Chicago.

Int. 6. Can you give us the conditions and terms of that contract?

(Objected to as being incompetent and not the best evidence.)

Question waived.

Int. 7. Mr. Smith, wasn't the fact that he had made an agreement with the county commissioners of Boone county relative to the settlement or cancellation of the taxes on the B. & M. railroad lands in Boone county for the years 1873 to 1877, inclusive, considered in the purchase of that tract of land?

Ans. 7. I am under the impression it was; as I say, I haven't seen this contract or looked at it for a long time. Either that or he assumed the taxes—undertook to settle them to their satisfaction.

Int. 8. Do you remember the price paid for that land?

Objected to as being incompetent.

Ans. —. The price varied so.

Int. 9. Well, give about the average price.

Ans. 9. Somewheres along about a dollar an acre—from a dollar to a dollar and thirty cents.

247 Int. 10. From a dollar to a dollar and thirty cents—some was more and some was less, wasn't it?

Ans. 10. Yes, sir; some was three dollars an acre. Of course, it is an average I am getting at.

Int. 11. Now, Mr. Smith, in reference to this road, were you here at the time the road was built?

Ans. 11. I was here most of the time; yes, sir.

Int. 12. You assisted your father in building that road, didn't you?

Ans. 12. Yes, sir.

Int. 13. How much did you say that road was expected to cost?

Ans. 13. We expected it to cost, when we undertook the enterprise, about seventeen thousand dollars; made our arrangements in that way.

Int. 14. That was the entire length of the road?

Ans. 14. Yes, sir.

Int. 15. How much of that road was in Boone county?

Ans. 15. Of course, I can't tell exactly, not having surveyed. I should think that there was about seventeen miles—seventeen or eighteen miles. Of course, this is only an estimate of mine.

Int. 16. Can you tell or give any idea of which half of the road cost the most, the half in Boone or the one outside of Boone county?

Ans. 16. We didn't estimate it in that way. I should say that Boone county cost the most, having to do it over again several times before we got through.

Int. 17. Isn't it a fact, Mr. Smith, that the B. & M. Railroad Company itself finally finished this road?

Ans. 17. There never was a day's work done on the road that I knew of. I was connected with the road—we were connected with the road from the time—till it was finished.

Int. 18. That is not the question. Whether or not the railroad company didn't in the end take it off your hands and finish it?

248 Ans. 18. By agreement with us? They didn't by agreement with us. We paid for all the work that was done on the road.

Int. 19. It is a fact that they sent men on here to finish it, isn't it?

Ans. 19. They did not send men on here to finish it.

Int. 20. Is it not a fact that a portion of this road was finally accepted and approved of by the county commissioners of Boone county as the work of the B. & M. Railroad Company?

Ans. 20. It might possibly have been so; but, as I said before, the work was done by us. In the B. & M. railroad's anxiety to have the people of this county satisfied——

Int. 21. Well, the railroad company gave you folks something, did't they, towards the building of that road?

Ans. 21. No.

Int. 22. Never paid you a dollar?

Ans. 22. Not that I know of myself.

Int. 23. The only consideration, then, that you had for building that road was the reduced price in the purchase of the land, was it, from the company?

Ans. 23. You may put the matter that way, or say that we bought the land subject to litigation, which we undertook to clear up.

Int. 24. You say in your direct examination that when you took this job of building this road you estimated the cost at seventeen thousand dollars. From whom did you take it?

Ans. 24. Take what?

Int. 25. The job of building this road. I understood you to say when you took the job——

Ans. 25. Well, I should have said when we undertook it—when we went to work.

Int. 26. How much land did you purchase from the B. & M. Railroad Company?

Ans. 26. Our original purchase?

Int. 27. No, sir; under this contract.

249 Objected to as being incompetent—the contract will show.

Ans. 27. I couldn't say without referring to the contract.

Int. 28. You say you sold over sixty thousand acres?

Ans. 28. Yes, sir.

Int. 29. Get your pay for it?

Ans. 29. I don't know whether we did or not, all of it.

Int. 30. You bought it and sold it under contract, didn't you?

Ans. 30. Yes, sir.

Int. 31. Well, you made a good profit off it, didn't you?

Ans. 31. Yes; some of it.

Int. 32. Didn't you make a good profit on all of it?

Ans. 32. No, sir; in early days the land had to be sold very cheap to make settlements on it. To get settlers, we had to sell it almost at cost.

Int. 33. That don't include the whole sixty thousand acres, does it?

Ans. 33. No; it doesn't.

Int. 34. About how many thousand acres did you sell in that way?

Ans. 34. I couldn't make a statement.

Int. 35. Isn't it a fact, Mr. Smith, that you have sold the most of this land at a large advance from the price you paid for it?

Ans. 35. Yes; that is what we bought it for.

Int. 36. Then you didn't purchase this land and make this contract and build this road wholly for the purpose of aiding the people of Boone county independent of your own interests, did you?

Ans. 36. No; not by any means.

Int. 37. As a matter of fact, it has been a money-making speculation to you, hasn't it?

Ans. 37. It certainly has.

Int. 38. Now, then, Mr. Smith, you say that you built a large residence and barns and sheds, etc. You own that yet, don't you?

Ans. 38. Yes.

Int. 39. You occupy the premises?

Ans. 39. Yes.

250 Int. 40. You are making money off that, are you not, now?

Ans. 40. I would say I am making an effort to.

Int. 41. You say you brought a large amount of blooded stock into the county?

Ans. 41. Yes.

Int. 42. Did you sell it?

Ans. 42. Some of it; I have got a great deal of it left. I have had it for a good while, though.

Int. 43. You didn't give any of it away?

Ans. 43. I gave the services of the stallions away.

Int. 44. You do not charge for the services of your stallions and your bulls?

Ans. 44. I do; but it is the rarest thing that I ever collect anything.

Int. 45. You don't make a present of the services of these animals to the people of Boone county simply because they made this contract with your father, do you?

Ans. 45. It was part of the scheme to build up the country, to introduce fine stock and get it started here in the county.

Int. 46. Then you say that you charge for the services, don't you, but don't get your pay?

Ans. 46. Sometimes I do, but not always.

Int. 47. Well, then, as a rule, you charge, don't you?

Ans. 47. As a rule, I do now, but in early days I did not.

Int. 48. You say you built the town of Cedar Rapids and mills, etc. Did you give the people that built there the lands they built on?

Ans. 48. In many instances I did; started the town in that way; gave them lots to build on.

Int. 49. As a matter of fact, Mr. Smith, you have made money out of the town site of Cedar Rapids, have you not?

Ans. 49. I am under the impression that I have.

Int. 50. As a matter of fact, you have made money out of
251 the erection of the mill at Cedar Rapids, have you?

Ans. 50. I have, I think.

Int. 51. You say you have brought into the country many thousand dollars' worth of blooded stock?

Ans. 51. Yes, sir.

Int. 52. Out of which you have lost no money, have you?

Ans. 52. Oh, yes; a great deal of money.

Int. 53, Lost money by that?

Ans. 53. Oh, yes; that is my only——

Int. 54. Lost money by that?

Ans. 54. Yes; I did. I didn't expect to make money out of it when I brought it here; brought it for another purpose.

Int. 55. You say you are giving employment to a large number of men?

Ans. 55. Yes.

Int. 56. What are they doing, Mr. Smith?

Ans. 56. Farming.

Int. 57. For whom?

Ans. 57. For me.

Int. 58. Taking care of your stock?

Ans. 58. Taking care of stock.

Int. 59. Are you giving the employment to these men at this time and carrying on this farm for the simple and only reason that your

father formerly made a contract with the county commissioners to that effect, or is it for your own special benefit?

Ans. 59. It is for my own special benefit now.

Int. 60. Hasn't it been all the time?

Ans. 60. Indirectly. That was one of our means of getting settlers in here, by giving them work and helping to pay for their farms.

Int. 61. Had your father, to your knowledge, ever had any other transaction of like character in purchasing lands and locating town sites, etc., with the B. & M. Railroad Company?

Ans. 61. I know, of my own knowledge, that he never had
252 any dealings with them.

Int. 62. There was a man by the name of Smith located the town of York. He was not your father, was he?

Ans. 62. No, sir.

And also the said THOMAS THOMPSON WILKINSON, being about the age of 50 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Thomas Thompson Wilkinson, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MARQUETT:

Int. 1. Mr. Wilkinson, what is your name?

Ans. 1. My name is Thomas Thompson Wilkinson.

Int. 2. You were sworn in this case before, were you not, for the complainant?

Ans. 2. Yes, sir.

Int. 3. Were you one of the county commissioners of Boone county during the year 1878?

Ans. 3. Yes, sir.

Int. 4. You, I believe, have already testified in reference to the settlement of the taxes with Adam Smith and with the B. &. M. Railroad Company in Nebraska—the taxes of the B. & M. Railroad Company?

Ans. 4. Yes, sir; I believe I have.

Int. 5. Mr. Wilkinson, did the board of county commissioners know that these taxes had been enjoined by decree of court—that is, the tax on the lands of the Burlington and Missouri River Railroad Company in Nebraska for the years 1873 up to and inclusive of 1877—enjoined by decree of court entered by consent of both parties?

Ans. 5. That is what I always understood—in fact, there is a record of that decree, I think, in that treasurer's office.

253 Int. 6. When did you understand it? Always, I believe you said?

Ans. 6. Yes; it was always understood from the time that the decree was entered in the United States court. That is the way I have always understood it.

Int. 7. It was understood that Mr. Sessions, the county attorney, consented, and the decree was entered by agreement?

Ans. 7. That is the way I have always understood it.

Cross-examination by Mr. MILLER:

Int. 1. Do you know, Mr. Wilkinson, the time when that decree was entered?

Ans. 1. I don't know the exact date.

Int. 2. Did you at the time — on the day that the decree was entered, did you know it on that day?

Ans. 2. No, sir; I did not, the day it was entered. There was no telegraphic communication.

Int. 3. You were not present in court?

Ans. 3. No, sir.

Int. 4. Did you ever see the bill filed by H. H. Hunnewell in the United States court on the 4th day of March, 1878, against the county of Boone and the B. & M. Railroad Company and S. P. Bollman, county treasurer, and did you ever know its contents?

Ans. 4. I don't know anything about the matter, except that Mr. S. P. Bollman read the decree that he had received for record.

Int. 5. Now, that was all you knew about it, was it?

Ans. 5. Yes; I knew that a decree had been entered, but when——

Int. 6. Or its conditions? Did you know its conditions?

Ans. 6. Well, the conditions was understood in that agreement with Sessions, as I understood.

Int. 7. Did you know at that time that you say you heard Mr. Bollman read the decree that that decree was entered by the court without any consideration or examination into the facts as to whether the taxes in Boone county upon the B. & M. lands
254 were legal or illegal?

Ans. 7. No, I did not. The first knowledge I had about the particulars of the decree being entered was when the Major read his papers.

Int. 8. Just state when that was.

Ans. 8. I don't know exactly the date.

Int. 9. It was in 1884, wasn't it?

Ans. 9. Yes, it was in 1884.

Int. 10. Was it just prior to your giving your testimony in this case?

Ans. 10. Yes; it was either one or two days before.

Redirect examination by Mr. MARQUETT:

Int. 1. Mr. Wilkinson, all you knew at that time was what Mr. Miller told you, wasn't it?

Ans. 1. Yes.

Int. 2. You didn't know whether that was the way it was entered or not; you only knew that he told you that was the way?

Ans. 2. That is all.

Int. 3. You know, though, prior to the time it was entered, that such a decree was to be entered by consent of the parties, didn't you?

Ans. 3. What I knew about it was this—that from the first advent of Mr. Smith into Boone county it was the understanding of every-

body, as far as I could hear, that that original contract contemplated the relinquishing of all those back taxes—all the taxes for those years. I was told that before I had been a day in the county—before I was five miles in the county—on my way from the Black Hills, that the commissioners had made a contract with Mr. Adam Smith that in consideration of certain things to be done the commissioners had cancelled the back taxes. It was simply carrying out a stipulation contained in that contract, as I understood, was this work of Sessions.

Int. 4. What contract do you refer to?

Ans. 4. The contract made between the county, on the first part, and Adam Smith.

255 Recross-examination by Mr. MILLER:

Int. 1. Mr. Wilkinson, did you understand it in that agreement and this whole transaction—did you understand that there was to be a decree of court entered cancelling and annulling all the taxes on the B. & M. lands for those years in Boone county without the court having inquired into or investigated the legality or illegality of your levies and assessments?

Ans. 1. The understanding that I had about it was simply that there was to be a decree entered. I know I put the question to the board when they first met in regard to this Adam Smith contract, how it could be done, and they said by a decree of court. Well, I didn't ask how this decree was to be obtained, or anything about it; I simply understood that Sessions was to appear and represent the county in the matter, and do what he thought best; that was my understanding in the matter, because I heard Adam Smith tell the commissioners and also the people that unless those back taxes could be straightened up that he wouldn't touch a thing; that he would simply leave the county; and it was never understood, as far as I know, that any of those taxes was to be paid, because it was shown that they was illegal; that was the understanding that everybody had and the understanding that I had.

Int. 2. Did you ever make any examination of the tax lists, assessment-returns, and the levies made during any or all of the years included in said decree with a view to ascertain or find out whether the taxes were legal or illegal?

Ans. 2. I don't believe I did, because I am no lawyer; consequently I couldn't undertake to pass an opinion upon a law question, except in the general run of the commissioners' business the thing kept coming up in some shape or other at different times.

Int. 3. Then, Mr. Wilkinson, you formed this opinion, that the taxes or most of them, were illegal, simply because the rail-
256 road company refused to pay them. On that account, isn't it?

Ans. 3. No; I didn't form any opinion at all on that subject.

Int. 4. You had no opinion as to whether they were legal or illegal, did you?

Ans. 4. No; I know that a good many of them were illegal; I had good reason to believe that.

Int. 5. Then, you didn't sign that stipulation at Lincoln because

of any knowledge that you had that the taxes were illegal, did you?

Ans. 5. Well, I never understood that I went down there to take into consideration——

Int. 6. Just answer my question.

Ans. 6. Well, if you want a direct answer, I can't tell whether I did or not.

And also the said WILLIAM WEITZEL, being about the age of 44 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said William Weitzel, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MARQUETT:

Int. 1. What is your name, age, and place of residence?

Ans. 1. My name is William Weitzel; age, forty-four years; I reside six miles from Albion.

Int. 2. How long have you resided in Boone county?

Ans. 2. I have resided here since October 17, 1872.

Int. 3. Were you acquainted with the lands of the Burlington & Missouri River Railroad Company situated in Boone county?

Ans. 3. Yes, sir.

Int. 4. Were you acquainted with the value of those lands in the year 1873?

Ans. 4. Yes, sir.

Int. 5. What were they worth per acre, average—the whole lot?

Ans. 5. Well, they were worth, according to my opinion,
257 from twenty-five cents to a dollar and a half, with the exception of perhaps a few pieces nearer the railroad at, say, two dollars per acre.

Int. 7. Were you acquainted with their value in 1874?

Ans. 7. Yes, sir.

Int. 8. What was their fair value in 1874?

Ans. 8. I don't think they was worth as much at that time, because we had grasshoppers at that time.

Int. 9. Were you acquainted with the value of the Burlington and Missouri River Railroad Company's lands in Boone county during the year 1875?

Ans. 9. Yes, sir.

Int. 10. What were they worth per acre during that year?

Ans. 10. I don't think they was worth any more then than the price I stated; from twenty-five cents to a dollar and a half an acre.

Int. 11. Were you acquainted with the value of these lands in 1876?

Ans. 11. Yes, sir; I don't think they was worth any more then.

Int. 12. Were you acquainted with their value in the year 1877?

Ans. 12. Yes, sir.

Int. 13. What was their value per acre, on an average, for that year?

Ans. 13. I considered they wasn't worth any more than they was before.

Cross-examination by Mr. MILLER:

Int. 1. You say you were acquainted with the value of these lands in 1873?

Ans. 1. Yes, sir.

Int. 2. What means had you of knowing their value?

Ans. 2. I lived there; and I know people came here and nobody wanted to buy any.

Int. 3. Then you have no other means of knowing their value than that nobody wanted to buy?

Ans. 3. Yes, sir; and their great distance from the railroad.

258 Int. 4. Did you know of any of them being sold for that price?

Ans. 4. No; I have no recollection there was any sold for that price.

Int. 5. Now, Mr. Weitzel, isn't it a fact that there was a great deal of homestead land, Government land, in the county at that time that people preferred to buying from the railroad company?

Ans. 5. I am not aware of that fact.

Int. 6. Isn't it a fact that most of the people that came to Boone county at that time located on Government homesteads?

Ans. 6. Well, I am not prepared to say that.

Int. 7. Then, as a matter of fact, you didn't know but a little about the land business in Boone county at that time, did you?

Ans. 7. Well, I know as much as most of the people around here.

Int. 8. Well, at that time you didn't know much about the land business in Boone county, did you?

Ans. 8. Well, I can't say that I know a great deal about the land business now; it depends altogether on the standard you measure by.

Int. 9. Now, the standard that you measure by in estimating the value of the lands at that time was what they would sell for, ain't it?

Ans. 9. Well, what they was actually worth under the circumstances, having to go sixty miles to market.

Int. 10. Is it a fact that they had to go sixty miles to market?

Ans. 10. Most of them had to go that far, and some of them had to go farther.

Int. 11. Well, those that had to go that distance, did they have railroad land, or take Government land?

Ans. 11. Most of them had Government land.

Int. 12. Now, Mr. Weitzel, what you have testified to concerning this land and your knowledge of what it was worth in the year 1873, the same is true as to all the other years that you have testified to, is it not?

Ans. 12. It is; but I wish to say in this respect that the

259 grasshopper times and droughts affected the prices; that may have had something to do with it, and it may not; of course, this is merely my opinion.

Int. 13. During all those years there was little railroad land sold was there, at all?

Ans. 13. Not a great deal, as far as I know.

Int. 14. Were you dealing in real estate at that time?

Ans. 14. No, sir.
Int. 15. You were not buying nor selling, were you?
Ans. 15. No, sir.
Int. 16. Living on your homestead, were you?
Ans. 16. I was living on my homestead most of the time.

And also the said MANLY B. BOARDMAN, being about the age of 55 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Manly B. Boardman, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MARQUETT:

Int. 1. You may state your name, age, and place of residence.
Ans. 1. My name, Manly B. Boardman; my age will be fifty-five in February next, and my residence is Albion, Boone county, Nebraska.
Int. 2. How long have you resided in Boone county, Mr. Boardman?
Ans. 2. Well, it is nearly fourteen years.
Int. 3. Were you acquainted with the lands of the Burlington and Missouri River Railroad Company in Nebraska, situated in Boone county, for the year 1873?
Ans. 3. Well, I think that I was about as familiar with them as anybody in the county at that time. Of course, I wasn't acquainted with all the lands.
Int. 4. You knew their value, as a general thing?

Mr. MILLER: "We object to all this testimony relative to the value of the B. & M. lands in Boone county during all those years
260 as irrelevant and immaterial and not the best testimony."

Ans. 4. Well, there were no specific values then to any lands in this county that I recollect of.
Int. 5. How was it about homesteads? Was Government homesteads to be taken yet?
Ans. 5. What year do you refer to?
Int. 6. The year 1873.
Ans. 6. There were homesteads at that time to be obtained—Government homesteads.
Int. 7. How long could you obtain Government homesteads in this county?
Ans. 7. I couldn't tell you that.
Int. 8. As late as 1877?
Ans. 8. I think you can get them to-day, but nothing very desirable in the way of a homestead.
Int. 9. What were the lands of the Burlington and Missouri River Railroad Company in Nebraska, in Boone county, Nebraska, worth on an average, per acre, in the year 1873?

Objected to as being irrelevant, immaterial, and incompetent, and

for the further reason that the witness has not shown himself competent to testify on that question.

Ans. 9. Well, I would judge that they were worth just about Government price, a dollar and a quarter an acre, that year.

Int. 10. Were you acquainted with their value in 1874?

Ans. 10. Well, as much as I was in 1873.

Int. 11. What were they worth in 1874?

Ans. 11. I don't think there was any material increase in value at that time; just about the same.

Int. 12. What were they worth in 1875, on the average, per acre?

Ans. 12. That was about the grasshopper year, I think. I wouldn't say they were worth any more then.

Int. 13. Were you acquainted with their value then?

261 Ans. 13. Well, as I said before, there wasn't any value on lands here at that time, because people could get homesteads from Uncle Sam for nothing. Well, it cost them about fourteen dollars or something in that neighborhood to get lands, and there wrs no market value of lands at that time.

Int. 14. Were you acquainted with the value of these lands of the B. & M. Railroad Company in Nebraska, in Boone county, Nebraska, during the year 1876?

Ans. 14. As I said at the start, I was not acquainted with all the B. & M. lands in this county. I had a pretty thorough acquaintance with them in this precinct—Manchester precinct—from 1873 up to the present time.

Int. 15. That is in this precinct here?

Ans. 15. Yes.

Int. 16. They were higher here than in other precincts?

Ans. 16. I don't think they were along at that time.

It is hereby stipulated by the parties to this suit that they waive all informalities in reference to the records of the board of county commissioners of Boone county, Nebraska, provided the same has attached to it a certificate of the clerk of Boone county certifying that they are the records or a portion of the records of the board of county commissioners of Boone county.

By agreement and consent of the attorneys for the respective parties, complainant and respondent, the further taking of this testimony is hereby adjourned till Saturday, September 20th, 1884, at the hour of 2 o'clock in the afternoon, then to be continued at my office, in the Nebraska National Bank building, Omaha, Nebraska.

C. P. DRENNEN,
Special Examiner.

Pursuant to adjournment, as above stated, on the 20th day of Sept., 1884, at the hour of 2 o'clock in the afternoon, at my office, in the Neb. Nat'l Bank building, Omaha, Nebraska, T. M.

262 Marquett, Esq., appearing for the respondent and J. S. Miller, Esq., and J. C. Cowin, Esq., appearing for the complainant, I resumed the further taking of said testimony as follows, viz:

And also the said J. D. McFARLAND, being about the age of thirty-seven years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said J. D. McFarland, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MARQUETT:

Int. 1. What is your age, name, and place of residence?

Ans. 1. Thirty-seven; J. D. McFarland; reside at Lincoln, Nebraska.

Int. 2. Mr. McFarland, do you hold any position in the Burlington and Missouri River Railroad Company?

Ans. 2. Yes, sir.

Int. 3. What is your position?

Ans. 3. Land commissioner.

Int. 4. As such have you charge of the books and papers of the office?

Ans. 4. I have.

Int. 5. By those books and papers can you readily ascertain the numbers of land sold and deeded in any county in which they owned land?

Ans. 5. I can.

Int. 6. Now, Mr. McFarland, you may look at this (here a paper is shown witness) and state what that shows or what that is intended to show.

Ans. 6. That is an abstract of all sales of land made in Boone county, Nebraska, by the railroad company between March 1st, 1878, and July 1st, 1883, showing the number of sale, the description of each tract of land so sold, the acres, the price received, and the name of the purchaser and date of sale.

Mr. MARQUETT: "We will offer this paper referred to by
263 the witness in evidence as Exhibit B to his evidence. I believe it is understood that this paper is to have the same effect as though the original contract and deeds were put in evidence and no more. It is given in this abstract form in order to prevent the cumbering up of the record."

(Said paper, marked "Exhibit B," is hereto attached and made a part of this testimony.)

Mr. COWIN: "And the complainant objects to the testimony and takes exception thereto as incompetent, irrelevant, and immaterial. This objection is not made for the reason that the Exhibit "B" is an abstract of the sales, but is made the same as if the original papers were introduced."

Int. 7. Mr. McFarland, you stated that you had charge of the papers in the land commissioner's office of the Burlington and Missouri River Railroad Company. Did you ever see a contract, made between the Burlington & Missouri River Railroad Company and Adam Smith, in reference to lands in Boone county?

Ans. 7. Yes, sir.

Int. 8. Do you know where that original contract is?

Ans. 8. I do not at present. I don't find it among my papers there.

Int. 9. Have you ever made any search for it among the papers in the office?

Ans. 9. Yes, sir; I have.

Int. 10. What kind of a search?

Ans. 10. We keep all papers pertaining to the affairs of each county by themselves, and I looked carefully on several occasions through the file for Boone county, and also elsewhere in the office, and cannot find them.

Int. 11. You may look at this paper and see whether this is a correct copy of the original. You have seen the original contract, have you?

(A paper is here handed witness.)

Ans. 11. Yes, sir; I can say that this was in the files of my office as a copy of that contract; that it is made in the handwriting of the clerk who was formerly in my employ there, and I have
264 every reason to believe that it was copied from the original contract and is a true copy of it in every respect.

Mr. MARQUETT: "We will offer that in evidence."

(Said paper is introduced in evidence, and is hereto attached and made a part of this testimony, marked "Exhibit C.")

Mr. COWIN: "Complainant, by its attorneys, objects to the introduction of the paper marked Exhibit "C," not for the reason that it is a copy of the contract, but for the reason that the contents thereof are irrelevant, incompetent, and immaterial testimony."

Int. 12. I see that there are some deeds made there to the Nebraska Land and Live Stock Company in this abstract. How comes that?

Objected to as being incompetent, irrelevant, and immaterial.

Ans. 12. The Nebraska Land and Live Stock Company, as the assignee of Adam Smith, bought those lands from the company under the provisions of that contract, and the prices and terms are named in that contract.

Int. 13. Were the deeds given to Adam Smith and to the Nebraska Land & Live Stock Company warranty deeds?

Objected to as being incompetent, irrelevant, and immaterial.

Ans. 13. They were. I don't think there were any of them made to Adam Smith.

Cross-examination by Mr. COWIN:

Int. 1. Were there any sales made of railroad lands in Boone county before the date in this schedule?

Ans. 1. Yes, sir; there was.

Int. 2. Other than the sales made by the contract with Adam Smith?

Ans. 2. Yes, sir; yes, there were sales made to individuals—quite a number of them.

Int. 3. Do you remember in what years?

Ans. 3. No; I cannot state definitely without reference to the records, but I think there were sales made in the years 1874, 1875, 1876, and 1877—not in large quantities.

265 By consent and agreement of the attorneys for the parties, complainant and respondent, the further taking of this testimony is hereby adjourned till next Thursday, September 25, 1884, at the hour of 3 o'clock in the afternoon, then to be continued at the same place.

C. P. DRENNEN,
Special Examiner.

Pursuant to adjournment, as above stated, on the 25th day of September, 1884, at the hour of 3 o'clock in the afternoon, at my office, in the Neb. Nat'l Bank building, in the city of Omaha and State of Nebraska, T. M. Marquett, Esq., appearing for the respondent and J. C. Cowin, Esq., for the complainant, I resumed the further taking of said testimony as follows, viz:

And also the said T. M. MARQUETT, being about the age of — years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said T. M. Marquett, and he did thereupon depose, testify, and say as follows, viz:

"My name is T. M. Marquett. I am the general counsel for the Burlington and Missouri River Railroad Company in Nebraska, and have been such since January, 1870. I was also attorney for Horatio H. Hunnewell in the case of Horatio H. Hunnewell against the board of county commissioners of Boone county and the Burlington and Missouri River Railroad Company in Nebraska and the treasurer of that county. I was not present at the time the papers were prepared on the 30th of Januaay, 1878, which papers have been given in evidence in this cause, and had nothing to do with the procuring of the decree or judgment which is now sought by this suit to be set aside and cancelled until some time after that time. I refused to act upon anything done there, but did after the board of county commissioners of Boone county had passed a resolution ratifying this act and authorizing Mr. Sessions to appear and waive
266 summons and to compromise or settle the taxes on the lands of the railroad company in Boone county. After that period and after waiting for authority from Mr. Hunnewell, a stockholder, to commence the suit, the decree of which is now asked to be cancelled, I then met Mr. Sessions in reference to the matter. I prepared a bill, and as I understood the decree would be entered, probably by agreement, I wasn't as careful in the preparation of the bill as I otherwise would be, and there may be some data and figures that are not altogether correct, but in the main it is aimed to be correct. I met Mr. Sessions, as he says, and it is correct, as he says,

that he mentioned to me that he thought that the company or that the stockholders ought to pay some money independent of the work in Boone county that had been agreed to be done; and I did have the papers before me, or if I didn't I went and got them, and I did run over them with Mr. Sessions, stating, as I thought, that if they worked out the amount that was agreed to there that that would be equal to all the legal taxes that they had levied in the county, and I did show him, as he says, assessment-rolls certified by the clerk, but only for the years 1873 and 1874, and these are the assessment-rolls which I now wish to be put in evidence.

(These assessment-rolls are introduced in evidence and are hereto attached, marked "Exhibits D and E" respectively, and made part of this testimony.)

Mr. COWIN: "Counsel for complainant, upon said exhibits being offered in evidence, object to the same and each of them as incompetent, irrelevant, and immaterial."

Mr. MARQUETT: "I won't pretend to say all that I said, but another point that I made was that the assessment-rolls for the other years were not returned as they showed, some of them at least, within the time required by law.

(Counsel for complainant objects to this testimony as incompetent, irrelevant, and immaterial.)

"We likewise talked over the levies. I claimed that the
267 large proportion of them were illegal; and we finally—whether at that time or not—but we finally entered into a stipulation. I sent the bill in the case to be filed, and we entered into a stipulation. I have been unable to find the stipulation, and the clerk has been unable to find it among the papers. The substance of the stipulation by which it was entered, as I now recollect it, after giving the formal heading of the case, was about, in substance, this: That in and for the consideration, that the complainant caused to be worked out, and has agreed to work out—I think it was ten thousand, but it might have been more; it wasn't less—ten thousand dollars' worth of taxes in the way of building roads, under the orders of the board of county commissioners of Boone county, that a decree be entered cancelling as illegal the rest of the taxes. I think, in substance, that was about it. That was filed with the papers, and the decree entered, I believe, on the 8th day of March.

"At the time of this conversation with Mr. Sessions and the entering of the decree, so far as I was concerned, I don't think I had ever seen Adam Smith, and I knew nothing about who paid Mr. Sessions; never knew anything about that until after Mr. Clark commenced a suit in which he claimed—Loren Clark—in which some claim was made that Mr. Smith, I believe, paid Sessions; but I knew nothing about it.

"There were some objections made by some of the tax-payers of Boone county to the entering of this decree at the time it were entered, and this is a certified copy of the decree."

(Here the witness hands the examiner a paper, which he asks to be put in evidence, and which is put in evidence and marked "Exhibit F," and is hereto attached and made a part of this testimony; also two other papers, marked respectively Exhibits "G and H," which are introduced in evidence, hereto attached, and made a part of this testimony.)

Counsel for complainant objects to the introduction of exhibits "G and H," and objects to the testimony therein contained
268 as irrelevant and immaterial.

Mr. MARQUETT: "Now I desire to put in evidence this Exhibit 'I.'"

(Here witness puts in evidence a paper or pamphlet, which is marked "Exhibit I," hereto attached, and made a part of this testimony.)

Counsel for complainant objects to said testimony as irrelevant and immaterial.

With respect to the last testimony introduced it is agreed that the final decision in said cause as reported in the United States Reports may be read in evidence.

Mr. MARQUETT: "We here offer a certified copy of the complete record of the case of Loren Clark, in behalf of himself and other tax-payers of Boone county, *vs.* The County Commissioners of Boone County, The Burlington and Missouri River Railroad Company in Nebraska, and Horatio H. Hunnewell."

Said certified transcript of the complete record is put in evidence, marked "Exhibit K," and is hereto attached and made a part of this testimony.

Counsel for complainant objects to said testimony as irrelevant and immaterial.

Cross-examination by Mr. COWIN:

Int. 1. How long have you been engaged — counsel for the Burlington and Missouri River Railroad Company in Nebraska?

Ans. 1. Since January, 1870.

Int. 2. When was your attention first called to the matter of an effort by any person to settle the taxes assess upon the lands of the Burlington and Missouri River Railroad Company in Boone county?

Ans. 2. I think my attention was called to some kind of a settlement as early as 1874. We commenced a suit to enjoin the taxes for 1873 and 1874 probably in that year, and there was some talk of a settlement, I think, then. The suit was withdrawn after
269 the United States commenced an action against us to cancel our patents for the lands in Boone county.

Int. 3. Did you have any consultation with any one in regard to these taxes for all the years mentioned in the decree before the attempted settlement by the commissioners, Mr. Smith and Mr. Touzalin, in Lincoln, January 30th, 1878?

Ans. 3. I think I did.

Int. 4. With whom?

Ans. 4. I think I talked it over with Mr. Touzalin.

Int. 4. Who was Mr. Touzalin?

Ans. 5. Mr. Touzalin was the land commissioner of the Burlington & Missouri River Railroad Company in Nebraska.

Int. 6. In that conversation or any subsequent conversation was there anything said about getting the commissioners to act with you in eliminating this tax?

Ans. 6. No; I don't know that. I recollect that I advised at one time no settlement until after it was finally determined by the Supreme Court of the United States that we were the absolute owners of the land. I think that was the position that I took all along.

Int. 7. You are now familiar with the proceedings had between the county commissioners and Mr. Smith and the railroad company prior to the meetings in Lincoln January 30th, 1878. Did you know anything about any of those proceedings, contracts, or agreements prior to that time?

Ans. 7. Well, I might have done so; I don't have any very clear recollection; but the probability is that I knew that there were such contracts.

Int. 8. Did you, as counsel for the railroad company, advise the making of such contracts?

Ans. 8. No, sir; I did not. They were made in the east, at Burlington, I think—that is, the contract with the company is what I mean.

270 Int. 9. Did you know that the commissioners were to be in Lincoln to make a settlement of this matter?

Ans. 9. No; I have no recollection of that.

Int. 10. When did you first learn of what had taken place on the 30th of January, 1878, with respect to these taxes?

Ans. 10. When I returned home, some days afterwards.

Int. 11. What did you first learn about it?

Ans. 11. I think the papers or copies of them were shown me. Mr. Touzalin showed me what had been done.

Int. 12. What action, if any, did he desire you to take in the premises then?

Ans. 12. Well, I think he desired me to—I think he spoke something about commencing suit to enjoin the taxes to me; but I have but a very faint recollection of the —, though I judge that is what he did.

Int. 13. Was it talked about, how that suit should be commenced?

Ans. 13. No; I think not.

Int. 14. What action did you take?

Ans. 14. Well, I took no action till near a month after that.

Int. 15. Why?

Ans. 15. Well, I didn't take any action until after I ascertained that the county commissioners as a board, sitting in regular sessions, had authorized Mr. Sessions to act as their attorney.

Int. 16. To do what?

Ans. 16. In this case to compromise or to make an appearance for them and to compromise if he thought best.

Int. 17. Didn't you understand that he was employed by them in regular session for the purpose of carrying out the agreement made while they were in Lincoln?

Ans. 17. Well, I think the resolution they passed was ratifying that agreement. They ratified it in regular session—the
271 action they took in Lincoln. The power that Sessions had appears in the Exhibit "A" attached to his, Sessions', deposition.

Int. 18. Then, from that you understand that he was authorized to act for the county and to consent to the rendering of a decree in conformity to that agreement?

Ans. 18. Yes, sir. Yes, I understand he was authorized to act to render a decree in conformity to that agreement, or otherwise if he could get a better showing.

Int. 19. After the ratification act of the commissioners, what did you then do with respect to this case?

Ans. 19. It was after that that I made the stipulation with Mr. Sessions. I prepared the bill after that and had it filed, and made the stipulation with Mr. Sessions by which the decree was entered.

Int. 20. Which was drawn first, the stipulation or the bill?

Ans. 20. The bill was drawn first.

Int. 21. Who drew the bill?

Ans. 21. I think I did—that is, I dictated. I wouldn't say that I wrote it; probably did not.

Int. 22. Do you know who did write it?

Ans. 22. No, I do not.

Int. 23. Did Sessions assist you in dictating the bill?

Ans. 23. No; wasn't around at all when it was drawn.

Int. 24. You brought the bill in behalf of Mr. Hunnewell; did you get his consent to do so?

Ans. 24. Yes; I did. I waited some time to get that—some days.

Int. 25. What request did you make of him in that behalf?

Ans. 25. Well, I didn't make any request of him.

Int. 26. Who did?

Ans. 26. Well, I don't know that any one did. It was understood that the directors were opposed to any settlement or any action taken until after the case of the United States against the
272 company was determined; hence this was taken by a stockholder.

Int. 27. You say that you waited some time to get Mr. Hunnewell's consent. Did you finally get it?

Ans. 27. I ought to have said I waited some time for authority from him to bring this suit and likewise showing the action of the directors in refusing to bring the suit on his request. I waited some time for those—some days—I don't remember.

Int. 28. The railroad company was made defendant?

Ans. 28. Yes, sir.

Int. 29. In that case whose interests were you representing?

Ans. 29. Well, I represented the stockholders, though I didn't think that the stockholders' interests were greatly adverse to railroad's interest.

Int. 30. You were not hostile, really, to the railroad in that case, were you?

Ans. 30. Well, in one sense I was hostile; they were the defendants.

Int. 31. Did you, as general counsel for the railroad company, make any objection to the railroad company being made defendant?

Ans. 31. No, I don't think I did, unless, I believe, I generally counseled against any action until we knew we had title; but I generally did in the land matters as requested by Mr. Touzalin, as he was the head man in the land matters.

Int. 32. The simple fact of it is, I presume, Mr. Marquett, that the suit was brought in the interest of the railroad company, but brought in the name of Mr. Hunnewell for the purpose of giving the United States court jurisdiction?

Ans. 32. Well, all I know about that is this, that there was papers there shown to me which showed that the board of directors had refused to do anything in reference to enjoining these taxes, and that Hunnewell had sent out authority to commence a suit to enjoin them. Of course, if they were enjoined by Hunnewell I didn't know as it would greatly injure the company if they *as a*
273 directed a different course.

Int. 33. You understand, however, do you not, that the action of the board was for the sole purpose of making the proper allegations, so that Mr. Hunnewell might bring suit? I do not mean that you positively knew it, but that that was your understanding of it.

Ans. 33. No; I don't think I understood—I supposed that the directors were acting in good faith, but I don't know as I made any inquiry about it.

Int. 34. You say you looked over papers with Sessions. What papers did you look over with Sessions?

Ans. 34. It was certified copies of assessment-rolls and tax levies and all the papers necessary to determine what were legal or what illegal of the taxes in Boone county upon the Burlington and Missouri River Railroad Company's land; don't recollect just exactly what papers we looked over. I think we looked over all pertaining to that matter.

Int. 35. How long were you looking them over?

Ans. 35. Several hours, anyway.

Int. 36. And the consultation finally resulted in the signing of the stipulation by Mr. Sessions?

Ans. 36. Yes; whether it was signed that day or not, I don't think it was; but it finally resulted in the signing of the stipulation.

Int. 37. Who wrote the stipulation?

Ans. 37. Well, I either wrote it or had it written.

Int. 38. State, as near as you can, how that stipulation was signed, giving the signatures and designations, if any, that were attached to them.

Ans. 38. As near as I can —, it was signed by myself as counsel for Hunnewell, and signed by Mr. Sessions as counsel for the board of county commissioners of Boone county.

Int. 39. Did Mr. Sessions act for the other defendants?

274 Ans. 39. I think he did for the treasurer. I think the treasurer's name—that the treasurer was in as a party defendant.

Int. 40. Did he act for the railroad company?

Ans. 40. No; he did not.

Int. 41. Then there was no appearance for the railroad company?

Ans. 41. Not that I recollect of. There might have been.

Int. 42. You say after the stipulation was signed and your bill was drawn up you sent them up to be filed. Who did you send them by?

Ans. 42. I sent them by O. P. Mason.

Int. 43. The bill and stipulation?

Ans. 43. Yes; the bill and stipulation.

Int. 44. And what arrangement, if any, did you make for the entering of a decree in accordance with the stipulation?

Ans. 44. Well, now, it was like this: I was sick in bed and I didn't know exactly how long I would be there. The bill had been drawn and I sent for Mr. Mason—I heard he was going up to court—and gave him the papers to file; told him to file the papers, and if I didn't go up in a day or two to take a decree in accordance with the stipulation that I gave.

Int. 45. Did he take the decree?

Ans. 45. Well, I don't know; I suppose he did. He claims he did, but I don't know. I wasn't here when the decree was entered.

Int. 46. You spoke of objections being made by tax-payers to the entering of the decree. You know nothing about that, do you, except what your journal entry shows that you have introduced here?

Ans. 46. Nothing only what I have heard—only what Mr. Mason told me—and the journal entries. Of course, that isn't evidence. I knew afterwards about it, but not before the entry of the decree.

Int. 47. The decree was taken on the stipulation, wasn't it?

Ans. 47. Yes.

Int. 48. Do you know whether Mr. Sessions was present?

275 Ans. 48. No, I don't, only what I heard.

Int. 49. You spoke in your direct examination of refusing to act upon anything done at Lincoln until ratified. Who did you make the refusal to?

Ans. 49. When I got back and Mr. Touzalin showed me what had been done, I told him I didn't think they could act as a board at Lincoln; that before I would do anything they would have to, as a board in session, authorize Mr. Sessions to act.

Int. 50. You were then called upon, I suppose, at this time, by Mr. Touzalin, as the general counsel of the railroad company, to act in the matter?

Ans. 50. Well, I don't know how he called. He sometimes called upon me to act for the stockholders, and sometimes called to act for the railroad. I didn't know now, or don't know that anything was said about how I was to act at this particular time—the first time.

Int. 51. For the services performed by you in that case I presume the railroad company paid you, did it not?

Ans. 51. I drew nothing for that, only regular salary.

Int. 52. You mean your regular salary as counsel for the railroad company?

Ans. 52. Yes, sir.

Int. 53. Where was this stipulation signed, in Lincoln?

Ans. 53. That is my recollection. I think Mr. Sessions says it was signed up here in the United States court-room; it might have been, but my recollection is that it was signed in Lincoln.

Int. 54. As a matter of fact, you were not up here after the bill was filed until the decree was taken, were you?

Ans. 54. No; I wasn't, but I was up here attending court before that, a few days before that, and it might be that we fixed the stipulation then; but my better recollection would be that it was done at Lincoln.

276 Int. 55. When you were up here the bill had not then been filed?

Ans. 55. No; it had not, I don't think. No; it hadn't when I was up here.

Int. 56. When you sent up the bill and stipulation, did you also send a written decree to be entered?

Ans. 56. I don't recollect; but more than probably I did.

Int. 57. Do you know whether you showed that decree to Mr. Sessions or not?

Ans. 57. I don't think I did. I think I told Mr. Mason to show the decree to Sessions. I at least said that Sessions was on the other side of the case and there would probably be no objections to a decree.

Int. 58. As you recollect the decree drawn by you, it is the same as entered of record, is it?

Ans. 58. Yes, sir.

Redirect:

Mr. MARQUETT: "I wish to add to my own testimony that in the stipulation Mr. Sessions waived the issue of summons and made an appearance for the board of county commissioners of Boone county."

Recross-examination by Mr. COWIN:

Int. 1. In that connection, Mr. Marquett, don't you think that he also waived appearance for the railroad company in order that the decree might be entered up at once, the decree running against the railroad company the same as the other defendants?

Ans. 1. No; I had several of these cases, and I had my own views definitely fixed on them. I know he made no appearance for the railroad, and in none of the cases where an appearance was made; there was always some one else than the party that appeared for the county appeared for the railroad company; hence I would

277 say that he made no appearance there for the railroad company. If any one appeared for them in this stipulation it was Mason.

Int. 2. If Mr. Mason appeared for the railroad company, was that at your request?

Ans. 2. Well, I don't—it was either mine or Mr. Touzalin's; since I come to think, I think Mr. Touzalin is the man that—that Mr. Mason came there to my house at his request.

Int. 3. That is, Mason came to your house at Mr. Touzalin's request, as you understood it?

Ans. 3. I may be wrong about that.

Int. 4. Did Mr. Mason sign the stipulation?

Ans. 4. I don't recollect; I wouldn't say that he did, or that he did not.

Int. 5. I presume that you wouldn't have taken a decree against the railroad company as you did unless there had been an appearance by some one, would you?

Ans. 5. I think not. I think I didn't in the other cases; that there generally was an appearance, but it was some one other than the counsel for the county; but I don't recollect in this case.

Int. 6. How many cases of this character can you remember wherein Sessions appeared?

Ans. 6. This was the only case.

Int. 7. If there was an appearance for the railroad company and that appearance was by Mason, I presume your best impression would be that he signed the stipulation, would it not?

Ans. 7. Yes, or signed another stipulation; probably not this stipulation. He would have signed another stipulation.

Int. 8. What would that stipulation be?

Ans. 8. That stipulation would have been a consent to the decree.

UNITED STATES OF AMERICA,
District of Nebraska, State of Nebraska, County of Douglas, } ss:

278 I, C. P. Drennen, a special examiner in chancery, duly appointed by the circuit court of the United States for said district to take the testimony in the cause in the caption of the said testimony named, in accordance with the order of the court and the stipulations and agreements made and entered into between the said parties, by their attorneys, said stipulation and agreements and a certified copy of said order having been filed with complainant's testimony heretofore filed in this cause, do hereby certify that on the 13th day of September, A. D. 1884, at the hour of 9 o'clock in the forenoon, I was attended at the law office of T. M. Marquett, in the city of Lincoln, county of Lancaster, and State of Nebraska, in pursuance of the notice hereto attached, by T. M. Marquett, Esq., attorney for the said respondents, and J. C. Cowin, Esq., attorney for the said complainant, and the witness, M. H. Sessions; and also on the 16th day of September, A. D. 1884, at the hour stated, at the law office of Miller & Price, in the town of Albion, county of Boone, and State of Nebraska, by T. M. Marquett, Esq., attorney for said respondents, and J. S. Miller, Esq., attorney for said complainant, and the witnesses, John Peters, H. W. Lapping, Pearson D. Smith, Thomas Thompson Wilkinson, William Weitzel, and Manly B. Boardman; and also on

the 20th day of September, A. D. 1884, at the hour of 2 o'clock in the afternoon, at my office, in the city of Omaha and State of Nebraska, by said attorney, T. M. Marquett, Esq., J. S. Miller, Esq., and J. C. Cowin, Esq., and the witness, J. D. McFarland; and also on the 25th day of September, A. D. 1884, at the hour of 3 o'clock in the afternoon, at the same place last named, by J. C. Cowin, Esq., attorney for the said complainant, and T. M. Marquett, Esq., attorney for the said respondents, and witness, all of said witnesses being of sound mind and lawful age; and the said witnesses, before testifying, were by me sworn to testify the truth, the whole truth, and nothing but the truth touching such matters as were of them inquired in the cause, and the testimony of each was by me reduced to
279 writing in the presence of the witness and from his statements, and that the signing of said testimony by said witnesses was waived by consent and agreement of the attorneys for the parties, complainant and respondent; and I further certify that the Exhibits "A, B, C, D, E, F, G, H, I, & K" to the testimony of said witnesses, hereto attached, were introduced in evidence during the taking of said testimony.

I have retained the said testimony in my possession for the purpose of transcribing the same from my short-hand notes and of delivering the same to the court.

And I do further certify that I am not of counsel nor attorney for either of the parties in said testimony and caption named nor in any way interested in the event of the said cause named in said caption.

In testimony whereof I have hereunto set my hand this 6th day of October, A. D. 1884.

C. P. DRENNEN,
Special Examiner in Chancery.

Fee bill:

C. P. Drennen, sp'l examiner			$70 10
	Da.	Mi.	
M. H. Sessions, witness	1	100	11 50
John Peters, witness	1	1	1 60
H. W. Lapping, witness	1	11	2 60
Pearson D. Smith, witness	1	10	2 50
Thomas T. Wilkinson, witness	1	3	1 80
William Weitzel, witness	1	6	2 10
Manly B. Boardman, witness	1	1	1 60
J. D. McFarland, witness	1	67	8 20
T. M. Marquett, witness	1	67	8 20

THE COUNTY OF BOONE *vs.* B. & M. R. R. CO. IN NEBRASKA *et al.* } Respondents' Evidence & Complainant's Rebutting Evidence.

280 At a session of the circuit court of the United States for the district of Nebraska continued and held, pursuant to adjournment, at the United States court-room, in the city of Lincoln, on the

29th day of January, 1884, the Honorable Elmer S. Dundy being present and presiding in said court, the following, among other, proceedings were had and done, to wit:

LORAN CLARK
vs.
THE BURLINGTON AND MO. RIVER R'D CO. IN NEBR.

Now come the parties herein, by their solicitors, and submit to the court the demurrer of said defendant to the bill of said plaintiff.

"EXHIBIT L" OF RESPONDENTS' EVIDENCE, C. P. D.

THE UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the above and foregoing is a true copy of an order entered upon the journal of the proceedings of said court in the cause therein entitled; that I have compared the same with the original entry of said order and it is a true transcript therefrom and of the whole thereof.

Witness my official signature and the seal of said court, at Omaha, in said district, this 16th day of October, A. D. 1884.

[SEAL.] ELMER D. FRANK, *Clerk.*

Endorsed: No. 84, doc. E. United States circuit court, district of Nebraska. Loran Clarke *vs.* B. & M. R. R. Co. in Nebraska. Copy of order of court. Ex. "L."

On this 15th day of October, 1884, at my office, in the city of Omaha, county of Douglas, and State of Nebraska, at the request of the attorney for the respondents and on account of the absence of att'ys for complainant, I hereby adjourn the further taking of this testimony until to-morrow, Oct. 16th, 1884, at the hour of 10 o'clock in the forenoon, then to be continued at the same place.

281

C. P. DRENNEN,
Special Examiner.

Pursuant to adjournment, as above stated, on the 16th day of October, 1884, at the hour of 10 o'clock in the forenoon, at the office of Greene & Breckenridge, att'ys, in the city of Omaha, county of Douglas, and State of Nebraska, by consent and agreement of the attorneys for the parties, complainant and respondent, T. M. Marquett, Esq., appearing for the respondents and J. S. Miller, Esq., for the complainant, I resumed the taking of said testimony on behalf of the respondents as follows, viz:

And also A. E. TOUZALIN, being about the age of — years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of contro-

versy aforesaid, I did carefully examine the said A. E. Touzalin, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MARQUETT:

Int. 1. What is your name and place of residence?

Ans. 1. My name is A. E. Touzalin and I live in Boston.

Int. 2. What was your occupation or business in the year 1878?

Ans. 2. I was land commissioner of the B. & M. Railroad Company in Nebraska.

Int. 3. How long had you held that position and how long did you hold it after that period?

Ans. 3. I held it about four years and I continued to hold it about two or three years after that time—I think about two years after that.

Int. 4. Had the Burlington and Missouri River Railroad Company in Nebraska any lands in Boone county, Nebraska, in the year 1878?

Ans. 4. Yes; a large body of land.

282 Int. 5. Do you know anything about the arrangement made by Adam Smith in reference to having the taxes on the lands of the B. & M. Railroad Company in Boone county cancelled? and, if so, state all you know about it. You might, as near as you can, just give a detailed history in as few words as possible.

Ans. 5. The railroad company owned a very large body of lands in Boone county. A period of depression had existed in the State since 1873. The title to the lands had been questioned by the United States and was in the courts. The lands had been assessed at high valuation and a large amount of taxes had accumulated upon them. The financial condition of the railroad company itself was not good, the business of the road being in its infancy. For these and similar reasons the lands in Boone county were, indeed like all other lands in the State at that time, considered as poor property. Mr. Adam Smith, of Chicago, who had been a large land owner and land purchaser from the Illinois Central road, came to the Burlington road—came to our road—and submitted propositions to buy all or a large portion of the lands in Boone county, offering to pay certain considerations in money, credits, improvements to be made in the county, settlers to be put upon the lands, and similar improvements, and, in addition, he, Adam Smith, was to pay or to make settlement with the county for the taxes which had accumulated against the lands. In pursuance of the agreement with the railroad company Adam Smith went to Boone county and made some preliminary agreement with the authorities and leading citizens of the county, which agreement, in writing, he brought to the railroad company as evidence of his ability and intention to make a settlement with the county for the past taxes and of his intention to proceed to make certain improvements in the county as one of the considerations to pay the county for the settlement of the taxes.

283 Int. 5. Did Adam Smith ever come to Lincoln with the county commissioners of Boone county in reference to this matter of having the taxes cancelled?

Ans. 6. He did.

Int. 7. State what took place there, as near as you can recollect.

Ans. 7. My answer to that would be: Adam Smith did come to Lincoln with the county commissioners of Boone county. This visit was made after the preliminary agreement had been closed between Smith and the county authorities. The agreement which had been made required legal steps, and also required judicial determination of the state of the taxes involved; and Lincoln was also my own headquarters as the land commissioner of the road, and the visit to Lincoln was made by Mr. Smith and the commissioners for the purpose of having a meeting with all parties interested. Up to that time, as I remember, I had never seen the commissioners. I went up to Boone county twice after the settlement was made.

Int. 8. Were there any papers prepared at this meeting at Lincoln?

Ans. 8. Yes; I think so. What papers are you referring to?

Int. 9. Were there some papers drawn up there in reference to the matter of taxes?

Ans. 9. Yes; there were.

Int. 10. Look at the exhibits. (Here witness is shown the exhibits attached to the evidence taken and filed by the complainant in this case.) Look at Exhibit "B," Exhibit "C," and Exhibit "D," and state whether these were the papers that were drawn up at Lincoln at that time.

Ans. 10. Those papers, Exhibits "B," "C," and "D," were drawn up at Lincoln at that time.

Int. 11. Had you at that time seen the original agreement of which Exhibit "A" in complainant's evidence is a copy?

Ans. 11. I had seen the agreement marked Exhibit "A" previous to this meeting.

Int. 12. Now, you may state whether or not the Exhibits
284 "B," "C," and "D" were not drawn up for the purpose of carrying out the agreement as set forth in Exhibit "A," or rather what was the object of executing the Exhibits "B," "C," and "D?"

Objected to being incompetent.

Ans. 12. The object of the meeting at Lincoln and the drawing up of these papers was to carry into effect the agreement which had been made between Adam Smith and the Boone county authorities, as shown forth in the agreement marked Exhibit "A."

Int. 13. You may now look at Exhibit "B," and state whether that has been altered or changed since it was executed at Lincoln at that time.

Ans. 13. This is the same paper, unaltered, as I remember.

Int. 14. Who signed that paper, Exhibit "B?"

Ans. 14. The board of county commissioners for Boone county.

Int. 15. Any one else?

Ans. 15. M. H. Sessions, attorney for Boone county, and John Peters, county clerk for Boone county.

Int. 16. It is claimed that the latter part of this has been altered since it was drawn up. They claim that these words were not in: "Eradicate the whole of the taxes now charged against the first and third parties for the above years, all of said taxes having been examined and agreed upon as illegal and void." What do you say to that?

Ans. 16. My remembrance is that those are the original words, without any alteration of any kind.

Int. 17. Mr. Touzalin, did you have any conversation with M. H. Sessions, the party that signed his name to Exhibit "B" as the attorney, either prior to this meeting at Lincoln, at the time this paper was signed or afterwards, in reference to the taxes on the lands of the Burlington & Missouri River Railroad Company in Boone county or in reference to cancelling the same—any private conversation?

285 Ans. 17. If by private conversation you mean conversation to which the commissioners and the county clerk and all others in the office when the matters were discussed were not also hearers, I would answer, No. I will add this: Mr. Adam Smith and the county commissioners of Boone county had made a practical settlement, which needed examination and ratification in law, and that question and the question as to the legal proceedings were discussed between all parties.

Int. 18. Did you ever attempt to influence the action of Mr. Sessions in any way in favor of the railroad company or H. H. Hunnewell and as against the interest of Boone county by any conversation or otherwise that you might have had with him?

Ans. 18. No. Why should I endeavor to influence Mr. Sessions, when he was the counsel for the county of Boone, to carry out an agreement made by Mr. Adam Smith? As I understood the matter, there was nothing to be done except to legally proceed to obtain judicial determination of matters already fully agreed upon between Mr. Smith and the county commissioners.

Int. 19. Now, in this agreement with Adam Smith by which the taxes in the county of Boone of the Burlington & Missouri River Railroad Company was to be cancelled, was there anything to be done by the railroad company in reference to assisting in settling up Boone county or in getting settlers to go there as a part consideration for the cancelling of the taxes? If so, please state what that was.

Objected to as being incompetent and immaterial.

Ans. 19. Yes.

Int. 20. State in full what it was and what the company did in reference to the matter in getting settlers there.

Objected to as being immaterial.

Ans. 20. For the reason which I have given before, the railroad company was very desirous of disposing of the lands at al-

286 most any price and on almost any terms; and they did agree with the board of commissioners, and did afterwards put

into thorough effect systems for selling the lands at low prices and on very reasonable terms, the value of the lands having been greatly reduced and being sold on long credit and low interest; and special efforts were made to direct immigration into Boone county in order to sell and settle up the lands in that county; and, as a matter of fact, the lands in that county owned by Mr. Smith, and amounting to over a hundred thousand acres, as well as the lands of the railroad company, were sold with wonderful rapidity.

Int. 21. After the settlement?

Ans. 21. After this tax settlement was made.

Int. 22. Now, you may state under that whether you gave special rates for men that went there or anything of that kind.

Ans. 22. Every inducement was offered.

Int. 23. Special rates on the railroad?

Ans. 23. It wasn't on the line of our railroad, but we did obtain special rates on the Union Pacific and the other Northern lines.

Int. 24. Do you know about when the decree was entered in the case of H. H. Hunnewell *vs.* The Board of County Commissioners of Boone County and the B. & M. Railroad Company in Nebraska cancelling these taxes in the circuit court of the United States? Do you know about the time when it was entered?

Ans. 24. Yes.

Int. 25. After the decree in the circuit court of the United States had been entered cancelling those taxes did you have any talk with the county commissioners of Boone county in reference to that decree? And, if so, state what it was.

Objected to as being incompetent and immaterial.

287 Ans. 25. I went to Boone county on two occasions after that time. On one occasion to attend a meeting of the citizens of the county which I had asked to be at Albion, in order to fully explain and discuss the whole question, as it had been charged against the county commissioners that they had been improperly influenced in making the settlement and eradication of the taxes. We had a public meeting at Albion at which not only the commissioners but several hundred of the citizens were present.

Int. 26. You might state the result of that meeting.

Ans. 26. The result of the meeting was, I think, clear that the commissioners had done wisely and well, and were supported by the county in what they had done to the extent, I think, of seven-eighths of all the people present.

Int. 27. You might go on and say what talk, if any, you had with the commissioners about this—what they had to say about it at this time.

Ans. 27. I don't remember having any talk with the commissioners specially at this time.

Int. 28. Did they at this time understand fully that all the taxes had been cancelled on the lands of the B. & M. Railroad Company up to and including the year 1877?

Objected to as being incompetent and immaterial.

Ans. 28. Yes; entirely and fully, I should think. As much so as to-day.

Int. 29. Mr. Touzalin, do you know how much work was to be done by Adam Smith or by the company he represented—he represented a company, didn't he?—

(Mr. TOUZALIN:) "Yes, sir."

—as a consideration for the cancellation of these taxes on their road and bridges?

Objected to as being incompetent and immaterial.

Ans. 29. The great thing to be obtained at that time was the bringing in of a good class of people. Mr. Adam Smith, besides making the graded wagon road and building a certain number of houses and making other improvements that he promised on
288 paper, agreed also verbally to a system of work from which we all expected large results.

Int. 30. What company was he working for or acting for?

Ans. 30. He was acting chiefly for himself as the principal owner in the Nebraska Land and Live Stock Company.

Int. 31. Is Adam Smith alive yet?

Ans. 31. No; he died several years ago.

Cross-examination by Mr. MILLER:

Int. 1. Mr. Touzalin, in your direct examination you say that this was a period of depression for the railroad company at the time when you made this settlement of taxes?

Ans. 1. No; when we made the sale of land.

Int. 2. When you made the sale of land to Adam Smith was that the reason that you stipulated with Adam Smith that he was to pay or settle the taxes on all your lands in Boone county, and the reason why you had failed and refused to pay the taxes on the land up to that time?

Ans. 2. The railroad company would not have made a sale of lands to Mr. Adam Smith of such a very large amount at such a very low price under any ordinary circumstances, except those which prevailed at that time. The lands had been assessed at very large figures, had been legally taxed, as we were advised by counsel, the grasshopper trouble was keeping out immigration from Nebraska, and the country generally was in a state of depression, as I have stated, and it was under such circumstances that we made this large sale of lands at low prices to Mr. Adam Smith, obliging him to clear up the taxes by compromise or by action in the courts.

Int. 3. Do you say that Adam Smith had entered into an agreement with the county commissioners of Boone county, and that he came to Lincoln with the county commissioners and entered into certain agreements, referred to as Exhibits "B," "C," and
289 "D" in the testimony filed by the complainant; that those agreements and the action had at Lincoln at that time was in pursuance of the agreement filed and marked as "Exhibit A" in complainant's testimony; is that correct?

Ans. 3. The great purpose of the railroad company, for which I was acting as its land commissioner, was to sell the Boone county lands and the other lands in the North Platte county as quickly as we possibly could. Adam Smith and his corporation that he afterwards established seemed to be a means by which we could sell and settle the lands in Boone county, and the agreement between the commissioners and Adam Smith, marked Exhibit "A," was, if carried out faithfully, a good foundation for selling and settling the lands in that county. I may say here, in passing, that I never saw Adam Smith until after he had been into Boone county examining its lands and laying his plans for a large land operation and after he had made this agreement marked Exhibit "A."

Int. 4. Did Adam Smith or the Nebraska Land and Live Stock Company own by purchase from the B. & M. Railroad Company any lands in Boone county at this time—at the time of the settlement?

Ans. 4. At the time of the meeting at Lincoln I do not think that Adam Smith had closed for the purchase of any land in Boone county, but the records speak for themselves. Adam Smith had made an agreement to buy the land and the railroad company had made an agreement to sell it to him; but the railroad company did not propose to pass title to the property until all the terms of Adam Smith's agreement had been carried out, which consisted of making certain improvements, settling certain lands, building certain houses, etc.

Int. 5. Do you remember, Mr. Touzalin, whether or not Adam Smith was present with the commissioners at your office, in Lincoln, when this settlement was made and these agreements signed?

290 Ans. 5. Adam Smith was one of the parties participating. He came to Lincoln with the commissioners. As to whether he was present in the office or not I don't remember.

Int. 6. You say you had seen Exhibit "A" prior to making the stipulations or agreements referred to as Exhibits "B," "C," and "D." At what time before this had you seen it?

Ans. 6. It must have been in the month of August, 1877.

Int. 7. Did you examine the contract at that time—in August, 1877—and did you and Mr. Smith discuss its provisions?

Ans. 7. I was ill in bed—you may say seriously ill in bed—but recovered, and I did examine the contracts and did discuss it, but only in an imperfect way at that time.

Int. 8. Isn't it a fact that you knew prior to this meeting in January of the county commissioners—Adam Smith and yourself—that such a meeting would be had?

Ans. 8. Yes. I think that the meeting at Lincoln for the purpose of taking the legal steps necessary was suggested some weeks before it actually took place, and I made a point of being at Lincoln at that time, as I was moving constantly from one place to another.

Int. 9. Then, as a matter of fact, you knew when that meeting was to take place, and where, did you not?

Ans. 9. I did know it before the meeting took place.

Int. 10. Had the Nebraska Land & Live Stock Company been organized at that time, to your knowledge?

Ans. 10. The Nebraska Land and Live Stock Company, as I understand the matter, was then either actually organized or the papers were being filed, for the fact was raised by Mr. Smith that, in order to obtain moneys in Chicago to assist him in carrying forward his enterprise, he proposed to take certain bankers in Chicago into his enterprise, and for that purpose was forming a corporation to carry forward the work that he personally had agreed to do.

291 Int. 11. Were these contracts and stipulations referred to as Exhibits "B," "C," and "D" talked over in your office in the presence of all the parties, yourself included, and was it the expressed intention of the commissioners of Boone county to cancel all the taxes on all the lands for all the years there referred to without any examination into their legality or illegality being had in any court?

Ans. 11. The facts, I think, are these: The county commissioners, in such talk as they had with me, frequently expressed their determination to take only such steps as they could legally carry out, and hence it was that they desired to obtain legal advice and have all questions judicially determined. I was interested, as the agent of the company, to get these difficulties cleared up, so that the property in that county could be put in shape for settlement and sale. Mr. Smith was, I suppose, interested to get all difficulties cleared up, so that he could carry out his land operation and get the lands in shape also for settlement and sale. The commissioners, I think, clearly saw, just as we did, that as long as this illegal assessment and illegal levies and litigation in connection therewith remained unsettled questions that we could not settle and sell the lands at any price, and it was in order to get the difficulties that were in the way cleared up beyond any question that it was determined to place the matter in the courts. The assessments and the levies of taxes were very carefully and very thoroughly examined, and I do not think there was any doubt in any mind that some portion of the tax would be held as valid by a court of law, and the question as to how much should be paid into court or out of court to the county was considered. Adam Smith figured that the amount which he would pay to the county by the system of improvements and expenditures to be made by him for the company would amount to quite a considerable sum—as I remember now, between thirty and forty

292 thousand dollars. I know as a fact that he did spend a great deal of money in carrying out his agreements that were made. I think that we all had been fully advised by counsel that the only way of legal settlement was by judicial determination.

Int. 12. Do you know who examined the records of Boone county and the levies of the taxes made during those years and the assessments for those years with a view to determine their legality or illegality?

Ans. 12. On whose behalf?

Int. 13. Any one's behalf; either on behalf of the railroad company or the plaintiff?

Ans. 13. I think that such examinations were made by myself in connection with our counsel, Mr. Marquett, and by other employees of the company, and such examinations were, I think, made with the commissioners and Boone county clerk, because we argued at times as to facts of law with a view of finding a fair compromise basis.

Int. 14. Were you present in court at the time the decree was entered or when the bill was filed by H. H. Hunnewell and the decree sought to be set aside in this action was entered or when the case was presented to the court in any way—the case of H. H. Hunnewell *vs.*——

Ans. 14. I do not think I was.

Int. 15. Now, you say you went to Boone county after the entering of the decree in this case?

Ans. 15. Yes.

Int. 16. Did you go there by request of any party?

Ans. 16. My remembrance is that I went there at my own suggestion.

Int. 17. Did you go there for the purpose of attending a meeting of the citizens?

Ans. 17. I think I asked that a meeting be called in order that I might meet the citizens and the officials of the county.

293 Int. 18. Did you address that meeting at that time?

Ans. 18. I did.

Int. 19. Did you state to the citizens and officers of Boone county then assembled that a decree of court had been entered cancelling and annulling all the taxes for those years, and explain to them the terms and conditions upon which the decree was entered?

Ans. 19. My remembrance is that I did so clearly and fully state that a decree of court had been absolutely entered eradicating the past taxes.

Int. 20. Did you explain to the people at that time that the decree referred to was entered by the court by consent of the county commissioners and without any examination or inquiry having been made by the court as to the legality or illegality of any of the taxes in question?

Ans. 20. I remember that at this meeting the agreement marked Exhibit "A" was read out in full meeting. This agreement states that the county commissioners agreed to have the taxes abated and cancelled in such a way and manner as shall be legal and proper, so as to relieve the lands in Boone county from any and all liens in consequence of said taxes, and I did explain to the people that this agreement had been fully carried out in law, and I asked for this meeting in Boone county in order to discuss with every man in the county the manner of bringing forward the largest benefit to the county by the sale and settlement of the lands which was rendered possible by this tax settlement.

Int. 21. As a matter of fact, Mr. Touzalin, within your knowledge, the court made no inquiry into the legality or illegality of the taxes prior to entering the decree or when the decree was entered?

Ans. 21. That is a matter of which our counsel, Mr. Marquett,

had entire charge, and I do not know anything of the facts
294 in it. I always lean pretty heavy on my counsel.

Whenever there is any reference made to the B. & M. Railroad Company in this evidence, either for the complainant or the respondents, it is considered in this evidence to mean that it is the Burlington and Missouri River Railroad Company in Nebraska.

Here respondents put in evidence a paper marked "Exhibit L," which is hereto attached and made a part of this testimony.

T. M. MARQUETT, recalled, testified as follows:

I recollect about the time a suit of The United States *vs.* The Burlington and Missouri River Railroad Company in Nebraska was argued and decided by the Supreme Court of the United States; it was argued in February, 1879, and decided the following month.

The respondents rest.

Complainant's Rebutting Evidence.

Mr. MILLER: The complainant here offers in evidence the brief of points raised and authorities cited in support of the demurrer filed by the Burlington and Missouri River Railroad Company in Nebraska *et al.* in the case of Loran Clark *vs.* The Burlington and Missouri River Railroad Company *et al.*, referred to by "Exhibit L" in respondents' testimony, for the purpose of showing what was decided by the court under the demurrer in that case.

(Said brief is put in evidence, marked "Exhibit L," and is hereto attached and made part of this testimony.)

Mr. MARQUETT: We object to this as being irrelevant and incompetent.

The complainant has until the 5th day of November, 1884, to file his rebutting evidence in the clerk's office of this court, by consent.

In the United States Circuit Court for the District of Nebraska.

295 LORIN CLARK, Suing for Himself *et al.*
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD IN NEBRASKA *et al.*

The bill in this cause does not state a case entitling the plaintiff to any relief.

I. Considered as the bill of Clark individually, it shows no interest in him. The only allegation in the bill showing any interest is in the first paragraph, that he is a resident tax-payer of Boone county. It is not said that he owns real or personal estate in the county on account of which he pays taxes. The statement of the bill is satisfied if he pays only a poll tax of a dollar a year. The allegation is to be taken most strongly against the pleader, no greater effect to be attributed to it than the words imply. The payment of the poll tax

and its amount are neither of them at all affected by any of the matters alleged in the bill. That tax is a fixed sum and its payment is demanded under all circumstances.

A bill by a tax-payer for relief against the acts of public officers, in order to show an interest which is prejudiced by those acts, must state that the plaintiff has real or personal estate on account of which he pays taxes, and describe the property, in order that an issue may be taken on the allegation, and it must show that the taxes which he will be compelled to pay by reason of those acts will amount to $500 in order to show jurisdiction in this court.

King *vs.* Wilson, 1 Dillon, 555, 568.

The insufficiency of the bill in this particular is manifest.

"Exhibit L," of complainant's evidence, C. P. D.

II. The pleader seems to have been conscious of Clark's want of interest, and has sought to make a case in which he repre-
296 sents others having sufficient interest; but he has failed here. The allegations by which this bill is given its representative character are in the first paragraph, where he says he is authorized to bring the bill by one-third of the tax-payers of the county, "as well upon their (that is, the one-third of the tax-payers) behalf as upon his own;" and in paragraph twenty-one, where he says that at a mass meeting of tax-payers they authorized him to bring this bill "as well for them as for himself." The two allegations are doubtless to be taken together, the latter describing the manner in which the one-third mentioned in the former authorized him to act. However this may be, there being no statement of the number of tax-payers who attended the meeting and the bill being filed only for those who were present, it does not purport to be filed on behalf of more than Clark and one-third of the tax-payers of the county. It is not filed on behalf of the whole body of tax-payers of the county. This is insufficient for several reasons:

1. As Clark does not come here championing the public interests, but only the interests of his friends, who are one-third of the tax-payers, the bill must be considered as if all these friends of his had been named in the bill with him as plaintiffs. The case is no better when he represents a number of others than when they join him in the bill, and had they joined him in making these complaints it would have been incumbent on them to show that each had an interest of $500.00 in the controversy. King *vs.* Wilson, *supra.*

2. It does not appear from the bill that one-third of the tax-payers of the county are so numerous that it would be inconvenient to implead them in this bill. There is no allegation on the subject; and without it how is the court to know what is the number of tax-payers of this new and remote county, which is settled almost
297 wholly by homesteaders? The rule is that all persons interested must be before the court. The exception is where, by reason of great numbers, it is impossible or inconvenient to bring them in. The facts taking a case out of the rule must be stated. Story's Eq. Pl., sec. 94–97.

3. A representative bill cannot be brought by one tax-payer on behalf of himself and a part only — the whole body of tax-payers. The matter of this bill concerns the two-thirds of the tax-payers who are not represented as well as the one-third who are; and yet they are in no way before the court. If they are too numerous to be impleaded individually all of them must be present by representation.

If a part of these tax-payers may bring this bill, another part may bring a second, and so on until each tax-payer has his own suit against the same defendants for the same purpose. This would be intolerable.

III. This bill is also fatally defective because it does not contain the necessary allegations that Clark has applied to the board of county commissioners to bring a suit in their own name for the relief here sought. The relief is not for the individual member of the corporation as such, but for the corporatian. In the first instance, it is the proper party to bring the suit. In order to prevent a failure of justice, if the corporation refuses, the stockholder may bring it. His right of action accrues only when the governing body refuses to act. It follows that his bill must show his application to it and its refusal to act.

Samuel *v.* Holladay, 1 Woolw., 400, 417.
Hodges *v.* New England Screw Co., 1 R. I., 312.
Brown *v.* Van Dyke, 4 Halst. Ch., 795.
March *v.* Eastern R. R., 40 N. H., 548.
Robinson *v.* Smith, 3 Paige, 222.
298 Port Clinton R. R. Co. *v.* Cleveland & C. R. R. Co., 13 Ohio St., 544.
Mozley *v.* Alston, 1 Phill. Ch., 790–'8.
Foss *v.* Harbottle, 2 Hare, 461.

This is especially true in this case. The action here complained of was committed in January, 1878; this bill was filed in February, 1879. In the meantime, namely, in November, 1879, an election of at least one commissioner was held; so that the complexion of the board may have changed and it been quite willing to assist the alleged rights of the parties, and if it were it was the proper party to do so.

There are other equally fatal objections to this bill, but these are sufficient for our purpose.

T. M. MARQUETT,
Solicitor for Defendant.

J. M. WOOLWORTH, *Of Counsel.*

Filed Aug. 6, 1880.

WATSON B. SMITH, *Clerk.*

UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the an-

nexed copy of brief of T. M. Marquett in case of Lorin Clark *et al.* *vs.* B. & M. R. R. Co. *et al.* with the original on file in this office, and that the same is a correct transcript thereof and of the whole of said original.

In testimony whereof I have caused the seal of said court to be hereto affixed at the city of Omaha, in said district, this 6th day of December, 1883.

[SEAL.] ELMER D. FRANK, *Clerk*,
By A. L. FRANK, *Dep.*

UNITED STATES OF AMERICA, }
District of Nebraska, State of Nebraska, County of Douglas, } *ss:*

I, C. P. Drennen, a special examiner in chancery, duly appointed by the circuit court of the United States for said district to take the testimony in the cause in the caption of the said
299 testimony named in accordance with the order of the court and the stipulations and agreements of the attorneys for the parties, complainant and respondent, set forth in said testimony, do hereby certify that on the 16th day of October, 1884, at the hour of 10 o'clock in the forenoon, I was attended at the law office of Greene & Breckenridge, in the city of Omaha, county of Douglas and State of Nebraska, by T. M. Marquett, Esq., attorney for the said respondents, and J. S. Miller, Esq., attorney for the said complainant, and the witnesses, A. E. Touzalin and T. M. Marquett, all of said witnesses being of sound mind and lawful age; and the said witnesses, before testifying, were by me sworn to testify the truth, the whole truth, and nothing but the truth touching such matters as were of them inquired in the cause, and the testimony of each was by me reduced to writing in the presence of the witness and from his statements, and that the signing of said testimony by said witnesses was waived by consent and agreement of the attorneys for the parties, complainant and respondent.

I have retained the said testimony in my possession for the purpose of transcribing the same from my short-hand notes and of delivering the same, with this certificate, to the court.

And I further certify that "Exhibit L" to the testimony of respondents and "Exhibit L" to the testimony of complainant, hereto attached, were introduced in evidence during the taking of said testimony.

And I do further certify that I am not of counsel nor attorney for either of the parties in said testimony and caption named nor in any way interested in the event of the said cause named in said caption.

In testimony whereof I have hereunto set my hand this 22nd day of October, A. D. 1884.

C. P. DRENNEN,
Special Examiner in Chancery.

300 Ex. I, C. P. D.

Transcript of Record.

Supreme Court of the United States.

No. 146.

THE UNITED STATES, Appellant,

vs.

THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA.

Appeal from the circuit court of the United States for the district of Nebraska.

Filed September 8, 1876.

[Stamped:] Filed Oct. 6, 1884. Elmer D. Frank, clerk.

301 EXHIBIT I (Testimony of T. M. Marquett, C. P. D.).

Supreme Court of the United States.

No. 146.

THE UNITED STATES, Appellant,

vs.

THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA.

Appeal from the circuit court of the United States for the district of Nebraska.

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302 Pleas before the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, sitting in the circuit court of the United States for the eighth judicial circuit and district of Nebraska, at the term of May, 1876.

Be it remembered that on the 8th day of February, 1875, a bill and schedules were filed in the office of the clerk of said circuit court; which said bill and schedules are in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

THE UNITED STATES
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA.

To the judges of the circuit court of the United States for the district of Nebraska:

The United States of America, by James Neville, United States attorney for the district of Nebraska, brings this their bill of complaint against the Burlington & Missouri River Railroad Company in Nebraska, and for cause of complaint says:

I.

1. That under and by virtue of an act of Congress of the United States entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1st, 1862, the Union Pacific Railroad Company was incorporated with power and authority to lay out, locate, construct, furnish, maintain, and enjoy a continuous line of railroad and telegraph, with the appurtenances, from a point on the one-hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican river and the north margin of the valley of the Platte river, in the then Territory of Nebraska, to the western boundary of Nevada Territory upon the route therein provided, and with divers powers, privileges, immunities, franchises, and duties granted to and imposed upon it, as by the said act, reference thereunto being had, will appear; and by the third section of said act it was enacted "That there be, and hereby is, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad, on the line thereof and within the limits of ten miles on each side of said road not sold, reserved, or otherwise disposed of by the United States and to which

a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed." By the fourteenth section of said act it was further enacted "That the said Union Pacific Railroad Company is hereby authorized and required to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa, to be fixed by the President of the United States, upon the most direct and practicable route, to be subject to his approval, so as to form a connection
303 with the line of said company at some point on the one-hundreth meridian of longitude aforesaid, from the point of commencement on the western boundary of the State of Iowa, upon the same terms and conditions in all respects as are contained in this act for the construction of the railroad and telegraph first above mentioned."

2. By the thirteenth section of said act it was further enacted "That the Hannibal & St. Joseph Railroad Company of Missouri may extend its road from St. Joseph via Atchison to connect and unite with the road through Kansas, upon filing its assent to the provisions of this act, upon the same terms and conditions in all respects, for one hundred miles in length next to the Missouri river, as are provided in this act for the construction of the railroad and telegraph line first mentioned."

3. That by the act of Congress entitled "An act to amend an act entitled an 'Act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862," which last-entitled act was approved July 2, 1864, it was, among other things, by the fourth section of said act enacted that section three of said act first above entitled be hereby amended by striking out the word "five" where the same occurs in said section and by inserting in lieu thereof the word "ten;" striking out the word "ten" where the same occurs in said section and by inserting in lieu thereof the word "twenty;" and by sections eighteen, nineteen, and twenty thereof it was further enacted as follows: "That the Burlington & Missouri River Railroad Company, a corporation organized under and by virtue of the laws of the State of Iowa, be, and hereby is, authorized to extend its road through the Territory of Nebraska from the point where it strikes the Missouri river south of the mouth of the Platte river to some point not further west than the one-hundredth meridian of west longitude, so as to connect by the most practicable route with the main trunk of the Union Pacific railroad, or that part of it which runs from Omaha to the said one-hundredth meridian of west longitude, and for the purpose of enabling said Burlington & Missouri River Railroad Company to construct that portion of their road herein authorized the right of way through the public lands is hereby granted to said company for the construction of said road; and the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road earth, stone, timber, and other material for the construction thereof. Said right of way is granted the said company to the extent of two

hundred feet where it may pass over the public lands, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables, and water stations, and the United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this section and required for the said right of way and grant of land herein made.

"SECTION 19. And be it further enacted, That for the purpose of aiding in the construction of said road there be, and hereby is, granted to the said Burlington and Missouri River Railroad Company every alternate section of public land (excepting mineral lands, as provided in this act) designated by odd numbers, to the amount of ten alternate sections per mile on each side of said road, on the line thereof, and not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or home-
304 stead claim may not have attached at the time the line of said road is definitely fixed: Provided, that said company shall accept this grant within one year from the passage of this act by filing such acceptance with the Secretary of the Interior, and shall also establish the line of said road and file a map thereof with the Secretary of the Interior within one year of the date of said acceptance, when the said Secretary shall withdraw the lands embraced in this grant from market.

"SECTION 20. And be it further enacted, That whenever said Burlington & Missouri River Railroad Company shall have completed twenty consecutive miles of the road mentioned in the foregoing section, in the manner provided for other roads mentioned in this act and the act to which this is an amendment, the President of the United States shall appoint three commissioners to examine and report to him in relation thereto; and if it shall appear to him that twenty miles of said road has been completed as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said companies on each side of said road as far as the same is completed to the amount aforesaid, and such examination, report, and conveyance by patents shall continue from time to time in like manner until said road shall have been completed. And the President shall appoint said commissioners to fill vacancies in said commission, as provided in relation to other roads mentioned in the act to which this is an amendment, and the said company shall be entitled to all the privileges and immunities granted to the Hannibal & St. Joseph Railroad Company by said last-mentioned act so far as the same may be applicable: Provided, that no Government bonds shall be issued to the said Burlington & Missouri River Railroad Company to aid in construction of said extension of its road: And provided further, that said extension shall be completed within the period of ten years from the passage of this act."

4. That the Burlington and Missouri River Railroad Company, in the above-recited sections of said act mentioned, accepted the grant therein contained within the time in that behalf in said act limited, and established the line of its road and filed a map thereof

with the Secretary of the Interior within one year thereafter, as plaintiff is informed.

IV.

1. That Congress passed a joint resolution, as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of Congress approved July 2nd, 1864, granting certain lands to the Burlington & Missouri River Railroad Company to aid in extending its road through the then Territory of Nebraska to connect with the Union Pacific Railroad Company shall be so construed as to authorize the Burlington & Missouri River Railroad Company to assign and convey to a railroad company to be organized under the laws of the State of Nebraska all the rights, powers, and privileges granted and conferred by said act and subject to all the conditions and requirements therein contained."

Which resolution was approved on the tenth day of April, A. D. 1869.

V.

1. That the said defendant, The Burlington & Missouri River Railroad Company in Nebraska, was thereupon organized
305 and incorporated under and by virtue of the laws of the State of Nebraska—that is to say, subdivision entitled railroads, of chapter twenty-five of the Revised Statutes of said State—with full power to build the railroad in the aforesaid acts mentioned; and thereupon the said Burlington & Missouri River Railroad Company, for value by it therefor received, assigned and conveyed to the said defendant all the rights, powers, and privileges which were granted or conferred by the above-entitled act of July 2nd, 1864.

VI.

2. That the said Union Pacific Railroad Company entered upon the work of constructing its said railroad and telegraph lines, as well *as* those commencing on the one-hundredth meridian of longitude and running thence west as those commencing on the western boundary of the State of Iowa and running west to the said one-hundredth meridian and then connecting with first above mentioned lines, and completed both thereof on the 4th day of July, 1869, as complainant is informed.

3. That the said works were duly examined and approved by agents and officials of the Government, including the President, and they did and have since done all such matters and things as in the two acts aforesaid were required of them; that the lands granted to said company by said acts have been duly conveyed to it by letters patent of the Government for the whole distance of three hundred miles and more west from the said Missouri river to the extent provided in the fifth section of said act secondly above entitled, as well for and on account of the said road and telegraph running from said river to said one-hundredth meridian as for and on ac-

count of the said road and telegraph line running west from said one-hundredth meridian.

VII.

1. That on the fourth day of July, A. D. 1869, the said Burlington and Missouri River Railroad Company in Nebraska, under and by virtue of the authority upon it so as aforesaid conferred, commenced the construction of said road at the initial point on the Missouri river, at Plattsmouth, in Cass county, and thereafter prosecuted the same with such vigor that on the third day of November, 1871, it had completed the same through the counties of Cass, Saunders, Lancaster, Saline, and Fillmore to the eastern boundary of the county of Clay; that on said day and on divers days prior thereto, from time to time as the said work progressed, commissioners in that behalf appointed by the President of the United States, had reported to him by their several certificates that the successive sections of said road were completed as by said act required, as complainant is informed.

VIII.

1. That thereafter the said railroad company continued the prosecution of the work of constructing the said road through the counties of Clay, Adams, and Kearney to Fort Kearney, in the last-named county, where it made a junction with the said Union Pacific Railroad Company's road, as in the act secondly above entitled; that it completed the said road to that point on the third day of September, 1872; that thereupon it applied to the President of the United States to appoint commissioners to examine the said road running from the eastern boundary of Clay county to said terminus thereof; whereupon he appointed such commis-
306 sioners, and they, upon due examination by them made in that behalf, on or about the twenty-second day of November, 1872, by their certificate of that date, reported accordingly from said river to the said junction at Kearney.

IX.

1. That on the line of said defendant's railroad and within the limit specified by the act of July 2, 1864, portions of the lands had been sold, homesteaded, pre-empted, and reserved, or otherwise disposed of by the United States at the time of the taking effect of the said grant to the said defendant. Thereupon the said defendant made application to the proper department of the United States for patents to lands being outside of the limits contained in the said act of July 2, 1864, in lieu of those lands within the limits of said act which had been disposed of as aforesaid.

2. That thereafter, from the 31st day of May until the 7th day of November, 1872, the Commissioner of the General Land Office

made and delivered to the said defendant company several certificates to the effect that it was entitled to such lands and letters patent therefor; and afterwards and at divers times, to wit, June 15th, 1872, June 28th, 1872, September 19th, 1872, and November 12th, 1872, and November 20th, 1872, five several patents were issued to said company, wherein were, among others conveyed to said defendant, lands to the extent of 1,200,000 acres which were not within the said twenty-mile limit specified in the said act of July 2, 1864, a full description of which said lands being outside of said limit, together with the number of the several counties in which the same are situate, is set forth in the schedules hereto annexed, marked "A," and which the complainants pray may be taken as part of this bill.

X.

1. And thereupon the said complainants charge and insist that the said lands, to wit, the 1,200,000 acres, as specified in said schedule, and all other lands so as aforesaid patented to said defendant, being outside of the limit defined in said act of July 2nd, 1864, are not within the grant to said defendant company to it in and by the nineteenth section of the act secondly above entitled granted and authorized to be conveyed.

2. That the said patents conveying the said lands were to the extent to which they purported to convey the same to said defendant utterly without warrant or authority of law and are utterly null and void and improvidently issued.

XI.

1. The said complainant well hoped that the said defendant would desist from claiming any right, title, or interest in said lands, as if duly granted to it, but the said defendant claims and insists that it is entitled to the full and complete ownership of said lands, and still refuses to reconvey the same to the United States; all of which doings, actings, and refusals are contrary to equity, good conscience, and tend to the manifest wrong and injury of the said complainant.

XII.

1. In tender consideration whereof and forasmuch as said complainant is remediless in the premises at and by the strict
307 rules of common law and can only have adequate relief in a court of equity, where matters of this and like nature are properly cognizable and relievable.

2. To the end thereof that the said defendant may, if it can, show why said complainant should not have the relief herein prayed, complainant asks an order that defendant may answer this bill of the said complainant, and that it be by the decree of your honors declared that the grant to said defendant made in the nineteenth section of

this act secondly in this bill entitled did not extend to or include or convey the lands or any part thereof described in the annexed schedule, or other lands without the limit specified in the last-named act, or the issue to it of patents conveying the same, and that the said patents so as aforesaid issued to said company, to the extent to which the same purport to convey said lands or any thereof, are and each and every thereof is utterly null and void; that the said defendant be decreed to reconvey the said lands to the said complainant, and that the complainant may have the costs of this suit and all other and further relief that may appear necessary and equitable.

1. May it please your honors to grant unto the said complainant the writ of subpœna, issuing in proper manner and directed to the said defendant, commanding it that at a day to be therein inserted it be and appear by its proper officers before your honors in this honorable court, then and there to answer the premises and stand to, perform, and abide such order and decree in the premises as to your honors shall seem to be agreeable to equity and good conscience.

JAMES NEVILLE,
U. S. Attorney, Dist. Nebraska.

EXHIBIT A.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Webster County, Nebraska.

Part of section.	S.	T.	R.	Acres.
S. E. ¼ of S. E. ¼	15	1	9	40
All of	21	"	"	640
All of	23	"	"	640
N. W. ¼	25	"	"	160
N. W. ¼, W. ½ of S. W. ¼, & E. ½ of S. E. ¼	29	"	"	320
All of	31	"	"	642.80
S. E. ¼ of N. E. ¼, S. ½ of S. W. ¼, E. ½ of S. E. ¼, & S. W. ¼ of S. E. ¼	33	"	"	240
N. ½ of	1	2	9	320
All of	3	"	"	640
All of	5	"	"	641.76
Brought forward				9,017.68
All of	25	2	9	640
All of	29	"	"	640
N W. ¼ & E. ½ of S. W. ¼	33	"	"	240
N. ½ of	35	"	"	320
All of	7	3	9	640.80
S. ½ of	9	"	"	320
S. E. ¼ and W. ½	15	"	"	480
All of	17	"	"	640
All of	19	"	"	643.76
All of	21	"	"	640
S. E. ¼ and W. ½	23	"	"	480
S. E. ¼ and W. ½	25	"	"	480
All of	27	"	"	640
All of	29	"	"	640
All of	31	3	9	641.72
All of	33	"	"	640
N. E. ¼ & W. ½	35	"	"	480
N. E. ¼ of N. W. ¼ & S. ½ E. ½ of N. W. ¼, E. ½ of S. W. ¼, & E. ½	13	1	10	360
N. W. ¼, W. ½ of N. E. ¼, & W. ½ of S. W. ¼	15	"	"	480
All of	17	"	"	320
W. ½ of N. W. ¼, E. ½ of N. E. ¼, and E. ½ of S. E. ¼	19	"	"	643.20
Forward	23	"	"	240
All of	7	2	9	644.40
All of	9	"	"	640
N. W. ¼ & N. ½ of S. W. ¼	11	"	"	240
W. ½	13	"	"	320
N. ½ of N. E. ¼, S. ½ of S. E. ¼, & W. ½	15	"	"	480
All of	17	"	"	640
All of	19	"	"	648.72
All of	21	"	"	640
S. E. ¼ & W. ½	23	"	"	480
Forward				9,017.68
Forward				20,267.16

308 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Part of section.	S.	T.	R.	Acres.
Brought forward...	.....	.....	.....	20,267.16
N. W. ¼, W. ½ of N. E. ¼, E. ½ of S. E. ¼, & W. ½ of S. W. ¼.....	27	1	10	400
All of.....	31	"	"	642.32
All of.....	33	"	"	640
All of.....	35	"	"	640
All of.....	1	2	10	643
N. W. ¼ & E. ½.....	3	"	"	482.80
All of	5	"	"	640.20
All of.....	7	"	"	647.60
All of.....	11	"	"	640
E. ½ of.....	13	"	"	320
All of.....	17	"	"	640
W. ½ of..	19	"	"	329.44
Brought forward...	.....	.....	.....	32,141.76
All of.....	13	3	10	640
All of.....	15	"	"	640
E. ½ of N. E. ¼, N. W. ¼ of N. E. ¼, N. ½ of N. W. ¼, S. W. ¼ of N. W. ¼, and W. ½ of S. W. ¼..	17	"	"	320
S. W. ¼ of N. E. ¼, W. ½ of N. W. ¼, S. E. ¼ of N. W. ¼, and S. W. ¼...	19	"	"	329.28
E. ½.....	21	"	"	320
All of	23	"	"	640
All of.....	25	"	"	640
E. ½ of N. W. ¼, N. W. ¼ of N. W. ¼, E. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, and E. ½ of.....	27	"	"	560
Brought forward...	.....	.....	.....	42,081.40
W. ½ of S. E. ¼, S. E. ¼ of S. E. ¼, and S. W. ¼.	7	1	11	280.50
S. ½ of N. E. ¼ & S. E. ¼..	15	"	"	240
W. ½ of.....	17	"	"	320
All of.....	19	"	"	642.40
N. W. ¼, W. ½ of S. W. ¼, & E. ½ of S. E. ¼.....	21	"	"	320
W. ½ of.....	23	"	"	320
E. ½ of.....	25	"	"	320
N. E. ¼, W. ½ of S. W. ¼, & E. ½ of S. E. ¼.....	27	"	"	320
N. W. ¼ & W. ½ of S. W. ¼..	29	"	"	240
All of.....	31	"	"	640
All of	33	"	"	640
Brought forward...	.....	.....	.....	52,308.86
E. ½ of.....	21	2	11	320
S. W. ¼.....	23	"	"	160
S. W. ¼, W. ½ of S. E. ¼, & N. ½	25	"	"	560
All of.....	27	"	"	640
All of.....	29	"	"	640
S. E. ¼ & N. ½.....	31	"	"	488.18
All of.....	1	3	11	636 80
All of	3	"	"	631
All of.....	5	"	"	633.80
All of.....	7	"	"	633.60
All of.....	9	"	"	640
All of.....	11	"	"	640
W. ½ of N E. ¼, S. E. ¼ & W. ½.....	13	"	"	560

Part of section.	S.	T.	R.	Acres.
N. W. ¼..	23	2	10	170
E. ½ of.....	25	"	"	320
E. ½ of	27	"	"	320
N. E. ¼ & N. ½ of S. E. ¼..	31	"	"	240
S. E. ¼ & N. ½.....	35	"	"	480
All of.....	1	3	10	640
All of.....	3	"	"	640.24
All of..	5	"	"	641.60
E ½ of S. E. ¼, W. ½ of S. W. ¼, and N. ½.....	7	"	"	487.40
All of.....	9	"	"	640
All of.....	11	"	"	640
Forward	.....	.....	.....	32,141.76
All of.....	29	3	10	640
All of.....	31	"	"	649.32
W. ½ of N. W. ¼, S. E. ¼ of N. W. ¼, and S. W. ¼.	33	"	"	280
All of.....	35	"	"	640
All of.....	19	4	10	642
S. W. ¼.....	21	"	"	160
S. E. ¼ & W. ½.....	27	"	"	480
All of.....	29	"	"	640
All of.....	31	"	"	639.04
All of.....	33	"	"	640
All of.....	35	"	"	640
Forward	.....	.....	.....	42,081.40
All of.....	35	1	11	640
All of.....	1	2	11	642.40
All of.....	3	"	"	647.44
All of.....	5	"	"	644
All of.....	7	"	"	641.92
All of.....	9	"	"	640
S. E. ¼ & W. ½.....	11	"	"	480
All of.....	13	"	"	640
E. ½ of N. E. ¼ & W. ½ of N. W. ¼.....	15	"	"	160
N. E ¼.....	17	"	"	160
All of.....	19	"	"	648.80
Forward	.....	.....	.....	52,308.86
All of.....	15	3	11	640
All of.....	17	"	"	640
All of.....	19	"	"	638.40
All of.....	21	"	"	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	640
All of.....	29	"	"	640
All of.....	31	"	"	640
All of.....	33	"	"	640
All of.....	35	"	"	640
S. ½ of.....	5	4	11	320
Forward.....	.....	.....	.....	66,300.64

309 *Lands Granted to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward	.....	.....	.....	66,300.64
E. ½ of	7	4	11	320
All of	9	"	"	640
S. ½ of	13	"	"	320
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	637.72
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	636.80
All of	33	"	"	640
Brought forward	.....	.....	.....	79,338.08
All of	31	1	12	642.48
E. ½ of	33	"	"	320
S. ½ of N. E. ¼, S. E. ¼ & W. ½	35	"	"	560
All of	1	2	12	639.84
All of	3	"	"	639.40
All of	5	"	"	639.05
All of	7	"	"	633.88
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
N. ½ of N.W. ¼ & S.W. ¼ of S.W. ¼	17	"	"	120
All of	19	"	"	631.60
Brought forward	.....	.....	.....	92,110.61
All of	5	3	12	635.60
All of	7	"	"	612.80
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	615.80
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
S. W. ¼ & E. ½	31	"	"	468.20
Brought forward	.....	.....	.....	105,853.44
N. ½ of	17	4	12	320
S.W. ¼, S ½ of N.W. ¼, & E. ½	19	"	"	541.77
S. E ¼ & E. ½ of S.W. ¼	21	"	"	240
N. E. ¼ & S. ½	23	"	"	480
All of	25	"	"	640
All of	27	"	"	640

Parts of section.	S.	T.	R.	Acres.
All of	35	4	11	640
N. ½ of N.W. ¼	5	1	12	77.32
S. ½ of	9	"	"	320
All of	13	"	"	640
S.W. ¼ & E. ½	15	"	"	480
N.W. ¼, N. ½ of S.W. ¼	17	"	"	240
All of	19	"	"	645.60
E. ½ of N.W. ¼ & E. ½ of	21	"	"	400
N. E. ¼ & W. ½	23	"	"	480
All of	25	"	"	640
All of	27	"	"	640
N.W ¼	29	"	"	160
Forward	.....	.....	.....	79,338.08
All of	21	2	12	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
E. ½ of	29	"	"	320
N. ½ of S. W. ¼ & S.W. ¼ of S.W. ¼	29	"	"	120
S.W. ¼ & N. ½	31	"	"	468.88
N.W. ¼	33	"	"	160
N. ½ of S. E. ¼, N ½ of S.W. ¼, & N. ½	35	"	"	480
All of	1	3	12	639.80
All of	3	"	"	637 60
Forward	.....	.....	.....	92,110.61
All of	33	3	12	640
All of	35	"	"	640
W. ½ of N. E. ¼, W. ½ of S. E. ¼, & W. ½	1	4	12	483.27
All of	3	"	"	653.36
All of	5	"	"	659.20
All of	7	"	"	614.60
All of	9	"	"	640
N. ½ of	11	"	"	320
S. ½ of S. W. ¼, E. ½ of S.E. ¼, & S.W. ¼ of S. E. ¼	13	"	"	200
N.W. ¼	15	"	"	160
Forward	.....	.....	.....	105,853.44
All of	29	4	12	640
All of	31	"	"	612.52
All of	33	"	"	640
All of	35	"	"	640
Total acres in Webster Co.	.....	.....	.....	111,247.73

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Franklin County, Nebraska.

Part of section.	S.	T.	R.	Acres.	Part of section.	S.	T.	R.	Acres.
N. E. ¼	1	1	13	159.40	N. E. ¼, W. ½ of S. E. ¼, & W. ½	27	1	13	560
S. ½	5	"	"	320	All of	29	"	"	640
All of	7	"	"	644	All of	31	"	"	640
E. ½ of	9	"	"	320	All of	33	"	"	640
All of	13	"	"	640	All of	35	"	"	640
W. ½ of N. E. ¼, W. ½ of S. E. ¼, & W. ½	15	"	"	480	All of	1	2	13	638.40
N. E. ¼, S. ½ of N. W. ¼, & S. ½	17	"	"	560	N. W. ¼ & E. ½	3	"	"	476.52
N. ½ & S. W. ¼	19	"	"	481.60	S. ½	5	"	"	320
W. ½	21	"	"	320	All of	7	"	"	647.68
E. ½ of N. W. ¼, S. W. ¼, & E. ½	23	"	"	560	S. ½	9	"	"	320
All of	25	"	"	640	Forward				10,647.60
Brought forward				10,647.60	All of	3	3	13	639.68
All of	11	2	13	640	All of	5	"	"	640.32
All of	13	"	"	640	All of	7	"	"	638.56
W. ½ of S. W. ¼	15	"	"	80	All of	9	"	"	640
All of	17	"	"	640	All of	11	"	"	640
All of	19	"	"	643	All of	13	"	"	640
All of	21	"	"	640	All of	15	"	"	640
All of	23	"	"	640	All of	17	"	"	640
All of	25	"	"	640	All of	19	"	"	647.28
W. ½	27	"	"	320	S. E. ¼ & W. ½	21	"	"	480
All of	29	"	"	640	All of	23	"	"	640
W. ½ of	31	"	"	319.44	All of	25	"	"	640
N. W. ¼ & E. ½	33	"	"	444.93	All of	27	"	"	640
N. ½ of N. E. ¼ & E. ½ of N. W. ¼	35	"	"	160	Forward				25,901.25
All of	1	3	13	640.44					
Brought forward				25,901.25	All of	19	4	13	643.00
All of	29	3	13	640	All of	21	"	"	640
All of	31	"	"	647.72	All of	23	"	"	640
All of	33	"	"	640	All of	25	"	"	640
All of	35	"	"	640	All of	27	"	"	640
All of	1	4	13	663.64	All of	29	"	"	640
All of	3	"	"	669.46	All of	31	"	"	652.16
All of	5	"	"	674.18	All of	33	"	"	640
All of	7	"	"	633.32	All of	35	"	"	640
All of	9	"	"	640.00	N. E. ¼ & W. ½	7	1	14	479.76
All of	11	"	"	640	All of	9	"	"	640
All of	13	"	"	640	All of	11	"	"	640
All of	15	"	"	640					
All of	17	"	"	640	Forward				41,824.53
Brought forward				41,824.53	All of	5	2	14	635.24
All of	13	1	14	640	All of	7	"	"	637.52
All of	15	"	"	640	All of	9	"	"	640
All of	17	"	"	640	All of	11	"	"	640
S. W. ¼ & E. ½	19	"	"	481.31	All of	13	"	"	640
All of	21	"	"	640	All of	15	"	"	640
All of	23	"	"	640	All of	17	"	"	640
All of	25	"	"	640	E. ½ of N. W. ¼, E. ½ of S. W. ¼, & W. ½ of N. E. ¼	19	"	"	240
All of	27	"	"	640	N. E. ¼ & W. ½	21	"	"	486
All of	29	"	"	640	E. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, N. W. ¼ & E. ½	23	"	"	600
All of	31	"	"	641.80					
All of	33	"	"	640					
All of	35	"	"	640					
All of	1	2	14	636.80	Forward				56,415.20
All of	3	"	"	638					

311 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward...	.....	.....	.....	56,415.20
N. E. ¼ & W. ½	25	2	14	480
N. W. ¼, S. ½ of S. W. ¼, & E. ½	27	"	"	560
E. ½ of N. E. ¼, N. W. ¼ of N. E. ¼, & S. W. ¼ of S. E. ¼	29	"	"	160
N. E. ¼, S. W. ¼ of N.W. ¼, N. E. ¼ of S. E. ¼, & N. W. ¼ of S. W. ¼...	33	"	"	280
N. W. ¼	35	"	"	160
All of	1	3	14	636
All of	3	"	"	644
All of	5	"	"	643.28
All of	7	"	"	622.80
All of	9	"	"	640

Parts of section.	S.	T.	R.	Acres.
All of	11	3	14	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	630.80
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	638.92
All of	33	"	"	640
All of	35	"	"	640
Forward	.....	.....	.....	69,551.00

Brought forward...	.....	.....	.....	69,551.00
All of	1	4	14	670.12
All of	3	"	"	658.28
All of	5	"	"	640.56
All of	7	"	"	608.20
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	612.40
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640

All of	27	4	14	640
All of	29	"	"	640
All of	31	"	"	617.20
All of	33	"	"	640
All of	35	"	"	640
E. ½ of S. E. ¼, S. W. ¼ of S. E. ¼ & lot No. 1...	9	1	15	161.20
W. ½ of S. W. ¼ & S. E. ¼	11	"	"	240
All of	13	"	"	640
S. E. ¼ of	15	"	"	160
All of	17	"	"	640
All of	19	.....	.....	641.04
Forward	.....	.....	.....	83,520.00

Brought forward...	.....	.....	.....	83,520.00
All of	21	1	15	640
All of	23	"	"	640
S. E. ¼ & W. ½	25	"	"	480
E. ½	27	"	"	320
All of	29	"	"	640
All of	31	"	"	641.28
All of	33	"	"	640
All of	35	"	"	640
All of	1	2	15	639.92
All of	3	"	"	644.40
All of	5	"	"	638.64
All of	7	"	"	626.40
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640

W. ½ of	15	2	15	320
All of	17	"	"	640
N. E. ¼, N. W. ¼ of S. E. ¼ & W. ½	19	"	"	512.40
All of	21	"	"	640
W. ½ of N. E. ¼, W. ½ of S. E. ¼, S. E. ¼, & E. ½ of S. W. ¼	23	"	"	280
E. ½ of N. E. ¼	25	"	"	80
E. ½ of N. W. ¼, N.W ¼ of N. W. ¼, & W. ½ of N. E. ¼	27	"	"	200
All of	29	"	"	640
Forward	.....	.....	.....	95,953.04

Brought forward...	.....	.....	.....	95,953.04
N. E. ¼ of N. W. ¼	31	2	15	40
N. ½ of N. W. ¼ & N. W. ¼ of N. E. ¼	33	"	"	120
All of	1	3	15	641.60
All of	3	"	"	628.68
All of	5	"	"	635.48
All of	7	"	"	641.36
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	650
All of	21	"	"	640

All of	23	3	15	640
E. ½ of N. E. ¼ & S. ½	25	"	"	400
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	658.40
All of	33	"	"	646
All of	35	"	"	640
All of	1	4	15	633.18
All of	3	"	"	636.62
All of	5	"	"	639.54
All of	7	"	"	634.40
All of	9	"	"	640
Forward	.....	.....	.....	110,592.30

Brought forward...	.....	.....	.....	110,592.30
All of	11	4	15	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	639.64
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	644
All of	33	"	"	640
All of	35	"	"	640

Lot 3	1	1	16	40
E. ½ of	13	"	"	320
E. ½ of	25	"	"	320
E. ½ of	1	2	16	319.98
E. ½ of	13	"	"	320
E. ½ of	1	3	16	320.30
E. ½ of	13	"	"	320
E. ½ of	25	"	"	320
E. ½ of	1	4	16	316.29
E. ½ of	13	"	"	320
E. ½ of	25	"	"	320
Total acres in Franklin Co....	.....	.....	.....	122,152.51

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Dakota County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
W. ½ of N. E. ¼	3	27	6	80
Lots 1 & 2	35	"	"	29.44
S. W. ¼ of S. E. ¼	1	28	6	40
S. W. ¼ of N. E. ¼ & E. ½ of N. W. ¼	3	"	"	116.38
S. W. ¼ of S. E. ¼ & S. S. W. ¼	11	"	"	200
S. W. ¼ of S. W. ¼	13	"	"	40
S. ½ of N. W. ¼ & N. ½ of S. W. ¼	23	"	"	160
N. W. ¼ of N. E. ¼ & N. E. ¼ of S. E. ¼	25	"	"	80
W. ½ of N. E. ¼, N. E. ¼ of N. E. ¼, S. E. ¼ of S. E. ¼, & W. ½ of S. W. ¼	27	"	"	240
S. E. ¼, E. ½ of N. W. ¼, E. ½ of S. W. ¼, & N. W. ¼ of S. W. ¼	35	"	"	360
Bro't forward	.....	.....	.....	3,103.08
S. E. ¼ of S. E. ¼	7	28	7	40
S. ½ of N. W. ¼	11	"	"	80
N. E. ¼	15	"	"	160
E. ½ of S. E. ¼	17	"	"	80
E. ½, S. ½ of S. W. ¼	19	"	"	397.11
N. ½ of N. W. ¼	19	"	"	75.65
E. ½ of N. E. ¼, S. W. ¼ of N. E. ¼, E. ½ of S. E. ¼, N. W. ¼ of S. W. ¼, N. E. ¼ of N. W. ¼	25	"	"	280
S. E. ¼ of N. E. ¼	27	"	"	40
S. W. ¼	29	"	"	160
E. ½ of N. E. ¼, S. W. ¼, E. ½ of N. W. ¼, & S. W. ¼ of N. W. ¼	31	"	"	351.96
E. ½ of N. E. ¼ & E. ½ of S. E. ¼	33	28	7	160
N. ½ of	35	"	"	320
W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼	3	27	8	120
E. ½ of S. E. ¼ & N. W. ¼ of S. E. ¼	5	"	"	123.98
W. ½ of S. W. ¼ & S. E. ¼ of S. W. ¼	9	"	"	120
Lots 1 & 2	33	"	"	40
W. ½ of S. E. ¼ & S. E. ¼ of S. E. ¼	29	28	8	122.01
Total acres in Dakota Co.	.....	.....	.....	5,781.79

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Dixon County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
All of	5	27	4	645.68
W. ½ of N. W. ¼	11	"	"	80
E. ½ of	19	"	"	320
N. ½ of N. W. ¼ & N. W. ¼ of N. E. ¼	29	"	"	120
All of	1	28	4	622.48
N. E. ¼	13	"	"	160
N. E. ¼	21	"	"	160
W. ½ of S. W. ¼ & N. E. ¼ of S. W. ¼	23	"	"	120
W. ½ & W. ½ of S. E. ¼	25	"	"	400
W. ½ of	31	"	"	314 80
W. ½ of N. E. ¼ & S. E. ¼ of N. E ¼	5	27	5	120.65
N. W. ¼	5	"	"	160.04
W. ½ of S. E. ¼	9	"	"	80
Carried	.....	.....	.....	4,782.35
S. W. ¼ of N. E. ¼, S. ½ of S. E. ¼	9	28	5	120
W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼	9	"	"	120
And N. W. ¼	9	"	"	160
N. ½ of S. W. ¼ & N. W. ¼	11	"	"	240
S. E. ¼ & S. E. ¼ of S. W. ¼	13	"	"	200
N. ½ of N. E. ¼	17	"	"	80
W. ½ of N. E. ¼, N. W. ¼ of S. E. ¼	19	"	"	120
W. ½ of	19	"	"	315.40
E. ½ of N. E. ¼, N. E. ¼ of N. W. ¼, & S. E. ¼	1	27	7	280.40
N. E. ¼	3	"	"	160.60
E. ½ of	5	"	"	321.09
N. E. ¼	9	"	"	160
S. W. ¼ of S. E. ¼	13	"	"	40
N. W. ¼ of N. E. ¼ & N. W. ¼	15	"	"	200
N. ½ of S. E. ¼, S. E. ¼ of S. E. ¼, & W. ½	17	"	"	440
Lots 1 & 2	31	"	"	36.13
Lots 1 & 2	35	"	"	39.04
N. E. ¼ of S. W. ¼ & N. W. ¼ of S. E. ¼	3	28	7	80
Forward	.....	.....	.....	3,103.08
W. ½ of N. W. ¼ & E. ½ of S. E. ¼	33	28	7	160
N. ½ of	35	"	"	320
W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼	3	27	8	120
E. ½ of S. E. ¼ & N. W. ¼ of S. E. ¼	5	"	"	123.98
W. ½ of S. W. ¼ & S. E. ¼ of S. W. ¼	9	"	"	120
Lots 1 & 2	33	"	"	40
W. ½ of S. E. ¼ & S. E. ¼ of S. E. ¼	29	28	8	122.01
Total acres in Dixon Co.	.....	.....	.....	4,782.35
E. ½ of N. E. ¼, W. ½ of N. W. ¼	21	28	5	160
W. ½ of S. E. ¼, S. ½ of S. W. ¼	23	"	"	160
N. ½ of N. W. ¼ & N. E. ¼	23	"	"	240
N. ½ of N. E. ¼, W. ½ of N. W. ¼, N. E. ¼ of N. W. ¼, W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼	25	"	"	320
N. ½, E. ½ of S. E. ¼, & W. ½ of S. W. ¼	29	"	"	480
All of	31	"	"	631.20
Lots 1 & 2	31	27	6	17.71
Lots 1 & 2	33	"	"	20.34

313 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
N. W. ¼ of N. E. ¼, S. E. ¼ of N. W. ¼	5	28	6	76.79	N. E. ¼, E ½ of S. E. ¼	19	28	6	240
S. ½ of	7	"	"	306.71	N. W. ¼ of N. W. ¼	19	"	"	34.38
S. E. ¼ of N. E. ¼, S. W. ¼ of N. W. ¼	9	"	"	80	E. ½ of S. W. ¼, S. W. ¼ of S. W. ¼	21	"	"	120
S. ½ of N. E. ¼, S. ½, & S. ½ of N. W. ¼	17	"	"	480	Forward				9,504.88
Carried				9,504.88	S. W. ¼ of S. W. ¼	31	28	6	35.94
S. E. ¼ of N. W. ¼	21	28	6	40	All of	33	"	"	640
S. ½ of N. E. ¼ & N. E. ¼ of N. E. ¼, S. ½, & S. ½ of N. W. ¼	29	"	"	520	Total acres in Dixon Co.				10,740.82

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Cedar County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
N. E. ¼	1	28	1 W.	161.28	W. ½ of N. E. ¼, S. E. ¼ of N. E. ¼	17	28	1 E.	120
S. W. ¼	3	"	"	160	W. ½ & S. E. ¼	17	"	"	480
N. E. ¼	7	"	"	163	E. ½ & E. ½ of S. W. ¼	23	"	"	400
S. E. ¼	17	"	"	160	All of	25	"	"	640
W. ½	19	"	"	312.16	W. ½ of N. E. ¼ & S. E. ¼ S. ½ of N. E. ¼, S. ½ &	27	"	"	240
W. ½ of N. W. ¼ & N. E. ¼ of N. W. ¼	25	"	"	120	S. ½ of N. W. ¼	29	"	"	480
S. E. ¼ & N. ½ of S. W. ¼	29	"	"	240	N. E. ¼ and S. W. ¼	31	"	"	300.64
S. E. ¼	31	"	"	160	N ½ of	33	"	"	320
S. E. ¼	35	"	"	160	W. ½ of	35	"	"	320
N. ½ of	1	28	1 E.	316.86	W. ½ of	13	28	2	320
All of	3	"	"	639.79					
All of	7	"	"	595.56					
E. ½ of N. W. ¼ & E. ½ of S. W. ¼	9	"	"	160	Forward				6,966.29
Carried				6,966.29	S. W. ¼	19	28	3	159.65
E. ½ of	15	28	2	320	S. ½ of	25	"	"	320.00
All of	17	"	"	610	S. E. ¼ & S. ½ of S. W. ¼	31	"	"	239.30
W. ½ of	19	"	"	305.76	N. W. ¼ & S. ½ of S. E. ¼	33	"	"	240
All of	27	"	"	640	All of	35	"	"	640
W. ½ of S. W. ¼	31	"	"	71.82					
N. ½ of	35	"	"	320	Total acres in Cedar Co.				11,500.82
S. E. ¼	11	28	3	160					
N. ½ and S. E. ¼	17	"	"	480					

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Wayne County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
All of	1	25	1 E.	640.40	All of	25	25	1 E.	640
All of	3	"	"	646.60	E. ½ of S. E. ¼, S. W. ¼ of S. E. ¼, S. ½ of S. W. ¼, & N. W. ¼ of N. W. ¼	27	"	"	240
E. ½ of S. E. ¼ & W. ½ of S. W. ¼	5	"	"	160	S. E. ¼ of S. E. ¼, W. ½ of S. W. ¼, and W. ½ of N. W. ¼	31	"	"	159.40
All of	7	"	"	622.28	N. E. ¼, N ½ of S. E. ¼, E ½ of S. W. ¼	33	"	"	160
E. ½ & S. W. ¼	9	"	"	480	S. ½ of	35	"	"	320
N. E. ¼, N. E. ¼ of S. E. ¼, E. ½ of S. W. ¼, & E. ½ of N. W. ¼	11	"	"	360	E. ½ of N. E. ¼ & N. W. ¼ of N. E. ¼	1	26	1	120.15
N. E. ¼ and S. W. ¼	13	"	"	320	S. ½ of	3	"	"	320
W. ½ of N. E. ¼, W. ½ of S. E. ¼, & W. ½	15	"	"	480	Forward				6,468.83
S. ½ of	17	"	"	320					
N. E. ¼	19	"	"	160					
N. E. ¼	21	"	"	160					
N. E. ¼	23	"	"	160					

314 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
Carried forward	...	...	...	6,468.83	E. ½ and N. W. ¼	9	27	1	480
E. ½ and N. W. ¼	9	26	1	480	S. E. ¼	11	"	"	160
S. ½ of	11	"	"	320	N. ½ of S. E. ¼	13	"	"	80
N. W. ¼	15	"	"	160	W. ½ and S. E. ¼	17	"	"	480
N. E. ¼	21	"	"	160	W. ½ and N. E. ¼	21	"	"	480
W. ½ and N. E. ¼	23	"	"	480	W. ½ of S. E. ¼ & N. E. ¼ of S. E. ¼	21	"	"	120
W. ½ and N. E. ¼	27	"	"	480	W. ½ and S. E ¼	23	"	"	480
S. E. ¼	29	"	"	160	S. ½ of N. W. ¼	27	"	"	80
W. ½ and S. E. ¼	31	"	"	459.24	E. ½ of	29	"	"	320
E. ½ of	33	"	"	320	W. ½ of S. E. ¼, S. W. ¼ & S. ½ of N. W. ¼	31	"	"	302.45
S. ½ of	35	"	"	320	W. ½ of	33	"	"	320
N. ½ of S. W. ¼	1	27	1	80					
N. E. ¼ and S. W. ¼	3	"	"	320.44					
S. ½ of	5	"	"	320					
W ½ and S. E. ¼	7	"	"	445.40	Forward	...	...	...	14,276.36
Carried forward	...	...	...	14,276.36	S. ½ of	33	25	2	320
W. ½ of N. E. ¼ & S. E. ¼ of N. E. ¼	35	27	1	120	N. W. ¼	35	"	"	160
W. ½ of S. W. ¼ & S. E. ¼ of N. W. ¼	35	"	"	120	W. ½ of	7	26	2	309
N. W. ¼ of S. E. ¼ & N. W. ¼	5	25	2	202.20	W. ½ of	11	"	"	320
W. ½ of S. W. ¼ & N. E. ¼ of S. W. ¼	5	"	"	120	E. ½ of S. W. ¼	17	"	"	80
W. ½ of S. E. ¼ and W. ½	7	"	"	395	N. W. ¼ and N. E. ¼ of S. W. ¼	19	"	"	196.43
E. ½ of N. W. ¼	9	"	"	80	S. ½ of	21	"	"	320
N. W. ¼	17	"	"	160	N. E. ¼	35	"	"	160
All of	19	"	"	640.52	N. ½ of S. W. ¼	3	27	2	80
W. ½ of N. W. ¼	23	"	"	80	N. ½ of	5	"	"	320.52
S. E. ¼ & E. ½ of N. W. ¼	27	"	"	240	S. E. ¼ of S. W. ¼	7	"	"	40
W. ½ of N. E. ¼, W. ½ of S. E. ¼, and W. ½	29	"	"	480	N. ½ of S. W. ¼	11	"	"	80
All of	31	"	"	640.52	E. ½ of N. E. ¼ & N.W. ¼ of N. E. ¼	15	"	"	120
					Forward	...	...	...	20,060.55
Bro't over	...	...	...	20,060.55	All of	3	27	3	632.04
S. ½ of S. E. ¼	17	27	2	80	W. ½ of	7	"	"	318.52
N. ½ of N. E. ¼	19	"	"	80	W. ½ of N. E. ¼ & N. W. ¼	11	"	"	240
S. ½ of N. W. ¼ & W. ½ of S. W. ¼	1	26	3	160	E. ½ of N. E. ¼ & W. ½ of S. E. ¼	33	"	"	160
S. E. ¼	5	"	"	160	S. ½ of S. E. ¼	35	"	"	80
N. ½ of	11	"	"	320					
N. E. ¼	17	"	"	160					
N. ½ of N. E. ¼, N. ½ of N. W. ¼	1	27	3	158.52	Total acres in Wayne county	...	...	...	22,729.63
E. ½ of S. W. ¼ & N. W. ¼ of S. W. ¼	1	"	"	120					

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Pierce County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
All of	1	25	1	639.40	N. ½ of	1	26	1	320
N. W. ¼	3	"	"	160.41	N. W. ¼	3	"	"	160.99
All of	11	"	"	640	E. ½ and N. W. ¼	5	"	"	481.08
E. ½ & N. W. ¼	13	"	"	480	N. W. ¼ of N. W. ¼	7	"	"	39.02
E. ½, S. W. ¼ & N. W. ¼ of S. W. ¼	13	"	"	120	All of	13	"	"	640
All of	15	"	"	640	N. ½ & W. ½ of S. W. ¼	13	"	"	400
N. ½ and S. W. ¼	23	"	"	480	W. ½ of N.E ¼ & N.W ¼	23	"	"	240
All of	25	"	"	640	N. ½ of N. W. ¼, S. E. ¼ of N. W. ¼, N. E. ¼ of S. W. ¼	25	"	"	160
N. E. ¼, W. ½ of S. E. ¼, N. E. ¼ of S. W. ¼	27	"	"	280	S. ½ of N. E ¼	29	"	"	80
S. ½ of N. E. ¼, N. E. ¼ of N. E. ¼, S. E. ¼, & S. ½ of S. W. ¼	35	"	"	360	S. ½ and N. E. ¼	7	27	1	478.48
					Forward	...	...	...	7,439.38

315 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				7,439.38
S. ½ of	21	27	1	320
S. E. ¼	29	"	"	160
S. ½ of S. W. ¼	31	"	"	81.36
W. ½ of	33	"	"	320
S. E. ¼ of S. W. ¼ & N. W. ¼ of N. W. ¼	35	"	"	80
S. ½ of N. E. ¼ & S. E. ¼ W. ½ of N. E. ¼, E. ½ of S. W. ¼, W. ½ of S. E. ¼, & S. E. ¼ of S. E. ¼	3	25	2	240
S. W. ¼ of N. E. ¼	11	"	"	280
All of	15	"	"	40
N. ½ of	19	"	"	635.72
S. E. ¼, N. ½ of N. W. ¼, S. ½ of S. W. ¼, & N. E. ½ of S. W. ¼	21	"	"	320
S. W. ¼	23	"	"	360
N. ½ of N. E. ¼, S. W. ¼ of N. E. ¼, N. W. ¼ of S. E. ¼, and W. ½	25	"	"	160
	29	"	"	480
All of	31	25	2	636
S. ½ of	33	"	"	320
W. ½ of N. E. ¼, S. E. ¼ of N. E. ¼	35	"	"	120
N. E. ¼	3	26	2	159.41
S. W. ¼	17	"	"	160
W. ½ of	31	"	"	311.92
W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼, & W. ½ of N. W. ¼	31	27	2	179.08
N. ½ and S. W. ¼ of S. W. ¼	1	28	2	379.33
S. E. ¼	3	"	"	160
N. E. ¼	9	"	"	160
W. ½ N. E. ¼ & W. ½ of S. E. ¼	21	"	"	160
N. E. ¼ & E. ½ of N. W. ¼	25	"	"	240
W. ½ of S. E. ¼ & W. ½ of N. W. ¼	35	"	"	160
Total acres in Pierce Co.				14,062.20

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Stanton County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
S. E. ¼ of N. E. ¼	1	22	1	40
S. W. ¼ of N. W. ¼	17	23	1	40
S. E. ¼	31	"	"	160
N. E. ¼	33	"	"	160
N. W. ¼ of N. E. ¼	35	"	"	40
All of	1	24	1	634.04
S. ½ of N. E. ¼ & N. W. ¼	11	"	"	240
S. E. ¼	17	"	"	160
S. ½ of S. E. ¼, S. W. ¼, and W. ½ of N. W. ¼	21	"	"	320
E. ½ of N. E. ¼, N. W. ¼ of N. E. ¼, S. E. ¼, N. W. ¼ of S. W. ¼, N. ½ of N. W. ¼, & S. W. ¼ of N. W. ¼	23	"	"	440
S. E. ¼ of N. E. ¼ and W. ½ of N. W. ¼	27	"	"	120
E. ½ of	29	24	1	320
S. W. ¼ & N. W. ¼ of N. W. ¼	33	"	"	200
N. W. ¼ of S. E. ¼	17	23	3	40
N. E. ¼ of N. E. ¼	27	"	"	40
N. E. ¼	11	24	2	160
W. ½ of N. W. ¼	31	"	"	64.87
Total acres in Stanton Co.				3,178.91
In Cuming County.				
S. E. ¼ of N. W. ¼	19	23	5	40
Lots 1 and 2	11	24	5	21,36

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Madison County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
N. ½ of S. W. ¼	1	22	1	80
S. W. ¼, N. ½ of N. E. ¼, & S. ½ of S. E. ¼	3	"	"	319.51
All of	5	"	"	638.68
All of	7	"	"	640.80
All of	9	"	"	640
S. ½ of	11	"	"	320
S. W. ¼	13	"	"	160
All of	15	"	"	640
All of	17	"	"	640
N. W. ¼	21	"	"	160
N. ½ and S. W. ¼	23	"	"	480
W. ½ of	25	"	"	320
E. ½ of	27	22	1	320
N. E. ¼	35	"	"	160
S. ½ of S. W. ¼	3	23	1	80
S. E. ¼ of N. W. ¼ & S. E. ¼ of S. E. ¼	5	"	"	80
N. ½ of	7	"	"	314.92
All of	9	"	"	640
N. E. ¼ of N. W. ¼	13	"	"	40
S. ½ of	15	"	"	320
S. W. ¼	17	"	"	160
Forward				7,153.91

316 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				7,153.91
All of	19	23	1	632.08
E. ½ of	21	"	"	320
E. ½ of N. W. ¼ & E. ½ of S. W. ¼	21	"	"	160
All of	23	"	"	640
S. ½ of S. W. ¼ & N. ½ of N. W. ¼	25	"	"	160
N. ½ of N. E. ¼, N. E. ¼ of N. W. ¼, S. ½ of S. E. ¼, & S. ½ of S. W. ¼	27	"	"	280
W. ½ of	29	"	"	320
N. E. ¼, S. ½, & S. ½ of N. W. ¼	31	"	"	552.04
All of	33	"	"	640
E. ½ of N. E. ¼ & S. ½ of N. W. ¼	35	"	"	160
E. ½ and N. W. ¼	1	24	1	479.42
N. W. ¼ of N. E. ¼, S. E. ¼, E. ½ of S. W. ¼, & N. W. ¼ of S. W. ¼	5	24	1	321.19
W. ½ of N. E. ¼, S. E. ¼ of N. E. ¼, and W. ½	7	"	"	432.92
S. ½ of N. W. ¼	9	"	"	80
N. ½ of N. E. ¼ & S. ½ of S. E. ¼	13	"	"	160
S. W. ¼	17	"	"	160
E. ½ of N. E. ¼	19	"	"	80
S. E. ¼ of S. W. ¼ & N. W. ¼ of S. W. ¼	21	"	"	80
N. E. ¼ of N. E. ¼	25	"	"	40
W. ½ and S. E. ¼	3	21	2	477.79
E. ½ of	5	"	"	317.80
E. ½ of	7	"	"	320
N. E. ¼	9	"	"	160
Forward				14,127.15

Parts of section.	S.	T.	R.	Acres.
Bro't forward				14,127.15
S. ½ of	11	21	2	320
W. ½ of N. W. ¼	13	"	"	80
N. W. ¼	19	"	"	163.40
N. E. ¼	21	"	"	160
S. E. ¼ and E. ½ of N. W. ¼	27	"	"	240
W. ½ and S. E. ¼	31	"	"	484
N. E. ¼, W. ½, S. E. ¼, and W. ½	1	22	2	559.60
N. E. ¼, N. ½ of S. E. ¼, & E. ½ of N. W. ¼	3	"	"	318.61
S. ½ of	15	"	"	320
S. ½ of	19	"	"	319.85
N. ½ of N. E. ¼ & W. ½ of S. W. ¼	21	"	"	160
E. ½ and N. ½ of N. W. ¼	23	"	"	400
W. ½ and S. E. ¼	29	22	2	480
All of	33	"	"	640
W. ½ of N. W. ¼ & S. E. ¼ of N. W. ¼	35	"	"	120
S. ½ of	1	23	2	320
N. ½ of S. E. ¼	3	"	"	80
N. E. ¼	5	"	"	160.42
S. ½ of N. E. ¼ and S. ½	7	"	"	399.75
S. E. ¼ of N. E. ¼ and S. ½	9	"	"	360
E. ½ of	11	"	"	320
W ½ and S. E. ¼	15	"	"	480
All of	17	"	"	640
W. ½ and S. E. ¼	19	"	"	476.58
All of	21	"	"	640
Forward				22,769.36

Parts of section.	S.	T.	R.	Acres.
Bro't forward				22,769.36
All of	23	23	2	640
All of	25	"	"	640
N. E. ¼	27	"	"	160
All of	29	"	"	640
S. E. ¼	31	"	"	160
N. ½ of S. W. ¼	31	"	"	78.30
All of	33	"	"	640
N. E. ¼	35	"	"	160
E. ½ of N. E. ¼, N. W. ¼ of N. E. ¼	1	24	2	131.27
W. ½ of N. W. ¼, N. W. ¼ of S. W. ¼	1	"	"	123.67
N. ½ of S. E. ¼, & S. E. ¼ of S. E. ¼	1	"	"	120
N. W. ¼ of S. E. ¼, N. ½ of S. W. ¼, N. W. ¼	3	"	"	281.25
W. ½ of N. E. ¼ & N. E. ¼ of N. E. ¼	3	"	"	122.79
All of	5	24	2	642.98
All of	7	"	"	634.16
All of	9	"	"	640
S. ½ of S. E. ¼ & S ½ of S. W. ¼	11	"	"	160
E. ½ of N. E. ¼, E. ½ of S. E. ¼	13	"	"	160
All of	15	"	"	640
All of	17	"	"	640
N. E. ¼ & N. ½ of N. W. ¼	19	"	"	239.24
N. W. ¼ of S. E. ¼	27	"	"	40
S. E. ¼ of S. W. ¼ and N. W. ¼	35	"	"	200
All of	1	21	3	640
All of	3	"	"	637.20
All of	5	"	"	635.80
Forward				32,576.02

Parts of section.	S.	T.	R.	Acres.
Bro't forward				32,576.02
All of	7	21	3	638.24
All of	9	"	"	640
All of	11	"	"	640
N. ½ of N. E. ¼, S. ½ of S. E. ¼, and S. ½ of S. W. ¼	13	"	"	240
W. ½ and S. E. ¼	15	"	"	480
All of	17	"	"	640
All of	19	"	"	642.56
All of	21	"	"	640
E. ½ of	23	"	"	320
S. E. ¼	25	"	"	160
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	641.40
All of	33	21	3	640
N. ½ and S. W. ¼	35	"	"	480
N. ½ and S. E. ¼	3	22	3	477.20
E ½ and S. W. ¼	5	"	"	477.30
N. E. ¼	7	"	"	160
N. ½ of S. E. ¼, N. ½ of S. W. ¼, & N. ½	9	"	"	480
N. ½ of	11	"	"	320
S. W. ¼ of S. W. ¼	15	"	"	40
S. ½ of N. W. ¼ and S. ½	17	"	"	400
All of	19	"	"	641.12
N. ½ of N. E. ¼, S. ½ of S. E. ¼, and N. W. ¼	21	"	"	320
Forward				43,973.84

317 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				43,973.84
All of	23	22	3	640
N. W. ¼	25	"	"	160
S. ½ of	27	"	"	320
N. W ¼ and S. E. ¼	29	"	"	320
All of	31	"	"	636.80
All of	33	"	"	640
All of	35	"	"	640
E. ½ of S E. ¼	7	24	3	80
W. ½ and S. ½ of S. E. ¼	9	"	"	400
E. ½ and S. W. ¼	13	"	"	480
S. W. ¼ of N. E. ¼, W. ½ of S. E. ¼, S. E. ¼ of S. E. ¼, and W. ½	15	"	"	480
All of	17	"	"	640
All of	21	"	"	640
Bro't forward				54,378.98
W. ½ of S. E. ¼	3	24	3	80
All of	5	"	"	638.88
All of	7	"	"	636.80
E. ½ of	9	"	"	320
S. W. ¼	11	"	"	160
E. ½ of N. E. ¼, E. ½ of S. E. ¼, & W. ½	13	"	"	480
E. ½, N. W. ¼, & W. ½ of S. W. ¼	15	"	"	560
S. ½ of	17	"	"	320
N. ½ of N. W. ¼	21	"	"	80
N. W. ¼ of S. E. ¼	23	"	"	40
S. ½ of S. E. ¼	33	"	"	80
S. ½ of N. E. ¼, S. E. ¼, & S. ½ of N. W. ¼	35	"	"	320
Bro't forward				64,207.50
All of	23	21	4	640
All of	25	"	"	640
N. ½ and S. ½	27	"	"	480
N. ½ of S. W. ¼	27	"	"	80
E. ½ of N. E. ¼, W. ½ of N. W. ¼	29	"	"	160
& W. ½ of S. W. ¼	29	"	"	80
All of	31	"	"	637.50
S. W. ¼	33	"	"	160
N. E. ¼, N. E. ¼ of S. W. ¼, E. ½ of N. W. ¼, & N. W. ¼ of N. W. ¼	35	"	"	320
All of	1	22	4	639.60
N. ½ and S. W. ¼	3	"	"	482.60
All of	5	"	"	645.04
All of	7	"	"	625.36
Bro't forward				74,623.60
All of	29	22	4	640
All of	31	"	"	627.64
All of	33	"	"	640
All of	35	"	"	640
S. W. ¼ of S. W. ¼	1	23	4	40
W. ½ and S. E. ¼	3	"	"	479.99
All of	5	"	"	639.38
E. ½, S. W. ¼, & E. ½ of N. W. ¼	7	"	"	553.80
W. ½ and S. E. ¼	9	"	"	480
E. ½ of	11	"	"	320
E. ½ and S. W. ¼	13	"	"	480
E. ½ of S. E. ¼, S. W. ¼ of S. E. ¼, W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼, W. ½ of N. W. ¼	15	"	"	320
All of	17	"	"	640
E. ½ of S. E. ¼	19	"	"	80
N. W. ¼ & N. W. ¼ of S. W. ¼	21	"	"	200
N. W. ¼, E. ½ of S. W. ¼ and S. W. ¼ of S. W. ¼	23	23	3	280
N. E. ¼, E. ½ of N. W. ¼ and S. W ¼ of N. W. ¼	25	"	"	280
N. ½, N. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, & N. W. ¼ of S. E. ¼	27	"	"	480
All of	29	"	"	640
All of	31	"	"	649.92
All of	33	"	"	640
S. ½ of N. W. ¼ & S.W. ¼	35	"	"	240
All of	1	24	3	638.84
N. ½ and S. W. ¼	3	"	"	479.58
Forward				54,378.98
All of	1	21	4	640.40
All of	3	"	"	638.84
All of	5	"	"	640.12
All of	7	"	"	633.48
All of	9	"	"	640
All of	11	"	"	640
E. ½, E. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, & S. ½ of N. W. ¼	13	"	"	520
W. ½ & S. E. ¼	15	"	"	480
All of	17	"	"	640
All of	21	"	"	640
Forward				64,207.50
All of	9	22	4	640
S. ½ of	11	"	"	320
E. ½ of S. W. ¼ & S. W. ¼ of S. W. ¼	13	"	"	120
N. ½ of N. E. ¼, S. ½ of S. E. ¼, & W. ½	15	"	"	480
All of	17	"	"	640
All of	19	"	"	426
All of	21	"	"	640
S. ½ of N. E. ¼, N. E. ¼ of N. E. ¼, S. E. ¼, S. ½ of S. W. ¼, & N. W. ¼ of N. W. ¼	23	"	"	400
All of	25	"	"	640
W. ½ of	27	"	"	320
Forward				74,623.60
All of	23	23	4	640
All of	25	"	"	640
N. E. ¼, S. ½ of S. W. ¼	27	"	"	240
S. ½ of N. E. ¼, N. W. ¼ of N. E. ¼, & W. ½	29	"	"	440
All of	21	"	"	630.36
All of	33	"	"	640
All of	35	"	"	640
All of	1	24	4	638.56
E. ½, E. ½ of N. W. ¼, N. W. ¼ of N. W. ¼	3	"	"	435.84
All of	5	"	"	629.98
W. ½ of N.E. ¼ & N.W. ¼	9	"	"	240
N. ½ & N. ½ of S. E. ¼	11	"	"	400
N. E. ¼	13	"	"	160
N. E ¼ of N- E. ¼	15	"	"	40
S. E. ¼	27	"	"	160
Total acres in Madison Co.				87,979.15

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Platte County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
N. E. ¼	3	20	1	156.48	N. ½ of	5	19	3	325.12
W. ½ of S. W. ¼ & W. ½ of N. W. ¼	3	"	"	158.03	N. ½ of	7	"	"	318.98
N. ½ of N. E. ¼, S. ½ of S. E. ¼ & N. W. ¼	9	"	"	320	All of	1	20	3	611.76
N. ½ of S. E. ¼, N. ½ of S. W. ¼	11	"	"	160	All of	3	"	"	603.96
N. W. ¼ of N. W. ¼	11	"	"	40	All of	5	"	"	601.64
W. ½ of	1	20	2	307	N. ½ of	7	"	"	310.95
All of	3	"	"	611.54	All of	9	"	"	640
All of	7	"	"	634.20	All of	11	"	"	640
All of	9	"	"	640	All of	13	"	"	640
All of	11	"	"	640	All of	15	"	"	640
All of	19	"	"	628.36	E. ½ of	17	"	"	320
					Forward				9,948.02
Brought forward				9,948.02	All of	7	19	4	625.60
S. W. ¼ of N. W. ¼ & W. ½ of S. W. ¼	19	20	3	106.24	All of	9	"	"	640
N. ½ S. W. ¼ & W. ½ of of S. E. ¼	21	"	"	560	S. W. ¼	11	"	"	160
All of	23	"	"	640	N. ½ and S. W. ¼	15	"	"	480
N. ½ of	25	"	"	320	All of	17	"	"	640
N. E. ¼ & E. ½ of S. E. ¼	27	"	"	240	All of	19	"	"	634.54
S. ½ of N. W. ¼ & N. W. ¼ of S. W. ¼	29	"	"	120	N. ½ of	21	"	"	320
All of	31	"	"	622.84	N. W. ¼	29	"	"	160
N. E. ¼ of N. E. ¼ & S. ½ of S. W. ¼	33	"	"	120	N. E. ¼, N. ½ of S. E. ¼, S. E. ¼ of S. E. ¼, & N. E. ¼ of S. W. ¼	1	"	"	305.01
N. W. ¼	35	"	"	160	S. ½ of	3	"	"	320
All of	1	19	4	645.60	All of	5	"	"	619.12
All of	3	"	"	657.28	N. ½ of N. E. ¼, S. W. ¼ of N. E. ¼, S. ½ & N. W. ¼	7	"	"	578.08
All of	5	"	"	654.32	Forward				20,276.65
Brought forward				20,276.65	All of	23	20	4	640
All of	9	20	4	640	All of	25	"	"	640
S. ½ of S. W. ¼ & N. ½ of N. W. ¼	11	"	"	160	All of	27	"	"	640
S. W. ¼ of N. E. ¼ & S. W. ¼	13	"	"	200	All of	29	"	"	640
All of	15	"	"	640	All of	31	"	"	615.76
All of	17	"	"	640	All of	33	"	"	640
All of	19	"	"	617	All of	35	"	"	640
All of	21	"	"	640	Total acres in Platte Co.				28,269.41

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Antelope County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
N. W. ¼	5	23	5	160.55	All of	23	23	5	640
W. ½ of	7	"	"	314.64	All of	25	"	"	640
E. ½ of	9	"	"	320	All of	27	"	"	640
E. ½ & N. W. ¼	11	"	"	480	All of	29	"	"	640
All of	13	"	"	640	All of	31	"	"	636.12
N. ½ of N. E. ¼	15	"	"	80	All of	33	"	"	640
All of	17	"	"	640	All of	35	"	"	640
All of	19	"	"	634.64	N. ½ of N. W. ¼	1	24	5	74.56
N. ½ of N. E. ¼	21	"	"	80	W. ½ of	19	"	"	302.48
N. ½ of N. W. ¼, S. W. ¼ of N. W. ¼	21	"	"	120	N. W. ¼ of N. W. ¼	21	"	"	40
W. ½ of S. W. ¼	21	"	"	80	Forward				8,442.99

319 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward...	.....	.....	.....	8,442.99
All of.....	31	24	5	627.92
N. ½ and S. E. ¼.....	33	"	"	480
All of.....	35	"	"	640
All of.....	1	25	5	641.80
All of.....	3	"	"	640.84
All of.....	5	"	"	633.44
N. ½ of N. E. ¼, S. ½ of S. E. ¼.....	7	"	"	160
W. ½ of.....	7	"	"	311.36
All of.....	9	"	"	640
All of.....	11	"	"	640
All of.....	13	"	"	640
N. ½ of.....	15	"	"	320
S. ½ of N. E. ¼, W. ½ of N. W. ¼.....	17	"	"	160
N. E. ¼ of S. E. ¼, S. W. ¼ of S. E. ¼.....	17	"	"	80

Parts of section.	S.	T.	R.	Acres.
W. ½ of S. W. ¼ & S. E. ¼ of S. W. ¼.....	17	25	5	120
All of.....	19	"	"	638
E. ½ of.....	21			320
N. ½ of N. W. ¼ & E. ½..	23	"	"	400
N. ½ of N. W. ¼ & S. E. ¼ of N. W. ¼.....	25	"	"	120
All of.....	27	"	"	640
All of.....	29	"	"	640
S. E. ¼.....	31	"	"	160
N. ½ of N. E. ¼ & S. ½ of S. E. ¼	35	"	"	160
All of.....	1	23	6	640.40
E. ½ and S. W. ¼.....	5	"	"	480.37
All of.....	7	"	"	604.92
Forward.....	.....	.....	.....	19,982.04

Parts of section.	S.	T.	R.	Acres.
Brought forward...	.....	....	.....	19,982.04
N. E. ¼, E. ½ of S. E. ¼..	11	23	6	240
S. W. ¼ of S. E. ¼, S. ½ of S. W. ¼.....	11	"	"	120
S. E. ¼ of N. W. ¼.....	11	"	"	40
All of.....	13	"	"	640
E. ½ and S. W. ¼.....	15	"	"	480
N. ½ and S. W. ¼.....	17	"	"	480
All of.....	19	"	"	609.32
S. ½ of.....	21	"	"	320
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	640
All of.....	29	"	"	640
All of.....	31	"	"	614.40
All of.....	33	"	"	640

Parts of section.	S.	T.	R.	Acres.
All of.....	35	23	6	640
S. ½, N. E ¼, & S. ½ of N. W. ¼.....	3	24	6	569.66
All of.....	5	"	"	661.44
All of.....	7	"	"	610.24
All of.....	9	"	"	640
All of.....	17	"	"	640
W. ½ & N. E. ¼.....	19	"	"	450.32
N. ½ of.....	21	"	"	320
W. ½ of N. E. ¼ & W. ½ of S. E. ¼.....	23	"	"	160
E. ½ of	25	"	"	320
N. ½ of.....	29	"	"	320
Forward.....	.....	.....	.....	32,057.42

Parts of section.	S.	T.	R.	Acres.
Brought forward...	.....	.....	.....	32,057.42
E. ½ and N. W. ¼	31	24	6	467.31
N. ½ of.....	33	24	6	320
N. ½ of S. E. ¼ & N. ½ of S. W. ¼.....	33	"	"	160
S. ½ of N. E. ¼, S. E. ¼...	35	"	"	240
S. E. ¼ of N. W. ¼	35	"	"	40
All of.....	1	25	6	637.88
All of.....	3	"	"	638.48
All of	5	"	"	633.52
E. ½ of.....	7	"	"	320
S. W. ¼.....	9	"	"	160
All of.....	11	"	"	640
N. E. ¼ of	13	"	"	160
N. E. ¼.....	15	"	"	160

Parts of section.	S.	T.	R.	Acres.
N. E. ¼.....	17	25	6	160
S. W. ¼.....	19	"	"	166.78
All of.....	23	"	"	640
All of.....	25	"	"	640
All of	31	"	"	646.40
E. ½ of N. E. ¼	35	"	"	80
All of.....	1	23	7	640.76
All of.....	3	"	"	641.02
All of.....	5	"	"	635.52
All of.....	7	"	"	620.38
All of.....	9	"	"	640
All of.....	11	"	"	640
All of	13	"	"	640
Forward	.....	.....	.....	43,425.47

Parts of section.	S.	T.	R.	Acres.
Brought forward...	.....	.....	.....	43,425.47
All of.....	15	23	7	640
All of.....	17	"	"	640
All of.....	19	"	"	624.80
All of.....	21	"	"	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	640
All of.....	29	"	"	640
All of.....	31	"	"	628.92
All of.....	33	"	"	640
All of.....	35	"	"	640
N. W. ¼, S. ½ of N. E. ¼, & N. E. ¼ of N. E. ¼...	1	25	7	274
N. E. ¼ of S. E. ¼.....	1	"	"	40
N. E ¼ of N. E. ¼.....	5	"	"	39.53

Parts of section.	S.	T.	R.	Acres.
S. E. ¼	7	25	7	160
S. ½ & S.W. ¼ of N.W. ¼..	9	"	"	360
All of.....	15	"	"	640
All of.....	17	"	"	640
All of.....	19	"	"	639.36
All of.....	21	"	"	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	640
All of.....	29	"	"	640
All of.....	31	"	"	640.56
All of.....	33	"	"	640
All of.....	35	"	"	640
Total acres in Antelope Co.	.....	.....	.....	58,352.64

EXHIBIT E.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Boone County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
All of	5	18	5	640
All of	7	"	"	638.04
All of	1	19	5	644.16
E. ½ and S. W. ¼	3	"	"	484.10
E. ½ of N. W. ¼	3	"	"	81.53
E. ½ of	5	"	"	320.99
W. ½ of S. W. ¼	7	"	"	66.69
W. ½ of	9	"	"	320
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	19	"	"	617.52
S. W. ¼	21	"	"	160
All of	23	"	"	640
Brought forward				13,416.85
All of	15	20	5	640
All of	17	"	"	640
All of	19	"	"	615.28
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	649
All of	27	"	"	640
W. ½ of S. E. ¼, S. W. ¼, and N. ½	29	"	"	560
N. ½ of S. E. ¼, N. ½ of S. W. ¼, and N. ½	31	"	"	462.86
E. ½ and S. W. ¼	33	"	"	480
All of	35	"	"	640
All of	1	21	5	642.88
All of	3	"	"	645.64
All of	5	"	"	642.92
All of	7	"	"	639.64
Brought forward				28,427.31
All of	29	21	5	640
All of	31	"	"	641.60
All of	33	"	"	640
All of	35	"	"	640
All of	1	22	5	642.80
All of	3	"	"	645.80
All of	5	"	"	647
All of	7	"	"	648.68
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	649.04
All of	21	"	"	640
Brought forward				47,027.71
All of	15	18	6	640
All of	17	"	"	640
All of	19	"	"	649.88
All of	21	"	"	600
All of	23	"	"	607.92
Lots No. 1 & 2	29	"	"	14.43
N. ½ of N. E. ¼, S. E. ¼ of N. E ¼	1	19	6	119.80
E. ½ of S. E. ¼, S. W. ¼ of S. E. ¼	1	"	"	120
S. ½ of S. W. ¼	1	"	"	80
All of	3	"	"	639.60
All of	5	"	"	649.56
All of	7	"	"	621.68
All of	9	"	"	640
All of	11	"	"	640

Parts of section.	S.	T.	R.	Acres.
All of	25	19	5	640
All of	29	"	"	640
All of	31	"	"	626.72
S. ½ of	33	"	"	320
N. E. ¼ & E. ½ of N. W. ¼	35	"	"	240
All of	1	20	5	622.44
All of	3	"	"	628.44
All of	5	"	"	631.40
All of	7	"	"	615.12
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
Forward				13,416.85
All of	9	21	5	640
N. ½ & S. E. ¼	11	"	"	480
E. ½ of S. W. ¼ and N. W. ¼ of S. W. ¼	11	"	"	120
N. ½ of N. W. ¼ & S. ½ of S. W. ¼	13	"	"	160
N. ½ of N. E. ¼, S. W. ¼ of N. E. ¼	15	"	"	120
W. ½ & S. E. ¼	15	"	"	480
All of	17	"	"	640
All of	19	"	"	641.24
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
Forward				28,427.31
All of	23	22	5	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	640.48
All of	33	"	"	640
All of	35	"	"	640
All of	1	18	6	640
All of	3	"	"	640
All of	5	"	"	640
All of	7	"	"	645
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
Forward				47,027.71
All of	13	19	6	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	623.04
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	627.88
All of	33	"	"	640
All of	35	"	"	640
All of	1	20	6	649.06
All of	3	"	"	652.92
Forward				62,434.48

321 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward				62,434.48
All of	5	20	6	668.64
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
N. ½ of N. E. ¼, S. E. ¼ of N. E. ¼	15	"	"	120
N. E. ¼ of S. E. ¼	15	"	"	40
S. ½ of S. E. ¼, W. ½ of N. W. ¼	19	"	"	147.58
S. ½ of S. W. ¼ & N. W. ¼ of S. W. ¼	19	"	"	108.02
N. W. ¼	21	"	"	160
N. ½ of N. E. ¼, S. E. ¼ of N. E. ¼	23	"	"	120
N. E. ¼ of S. E. ¼	23	"	"	40
S. ½ of S. W. ¼ E. ½ of N. W. ¼, & E. ½	25	"	"	480
S. W. ¼	27	"	"	160
Brought forward				76,036.00
All of	25	21	6	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	640 04
All of	33	"	"	640
All of	35	"	"	640
All of	1	22	6	640
All of	3	"	"	642.04
All of	5	"	"	639.40
All of	7	"	"	619.68
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
Brought forward				93,902.92
All of	9	18	7	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	629.12
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	613.80
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	628.71
All of	33	"	"	635.44
All of	1	19	7	640
All of	3	"	"	641.20
Bro't forward				112,375.31
All of	33	19	7	640
All of	35	"	"	640
E. ½ of N. E. ¼	1	20	7	87.61
All of	3	"	"	678.58
All of	5	"	"	674.14
All of	7	"	"	623.20
All of	9	"	"	640
All of	11	"	"	640
S. W. ¼	13	"	"	160
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	622
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	29	20	6	640
All of	31	"	"	618.72
All of	33	"	"	640
S. W. ¼ of	35	"	"	160
All of	1	21	6	641.48
All of	3	"	"	643.96
All of	5	"	"	641.12
All of	7	"	"	634.72
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	637.28
All of	21	"	"	640
All of	23	"	"	640
Forward				76,036.00
All of	19	22	6	623.60
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	633.36
All of	33	"	"	640
All of	35	"	"	640
All of	1	18	7	640
All of	3	"	"	640
All of	5	"	"	640
All of	7	"	"	628.80
Forward				93,902.92
All of	5	19	7	640.24
All of	7	"	"	626.52
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	628
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	629.36
Forward				112,375.31
All of	27	20	7	640
All of	29	"	"	640
All of	31	"	"	622.80
All of	33	"	"	640
All of	35	"	"	640
All of	1	21	7	640.38
All of	3	"	"	636.84
All of	5	"	"	641.52
All of	7	"	"	629.44
All of	9	"	"	640
E. ½ of S. E. ¼, E. ½ of S. W. ¼, & N. ½	11	"	"	480
All of	13	"	"	640
All of	15	"	"	640
Forward				129,111.82

322 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward...	.....	.....	.....	129,111.82
All of.....	17	21	7	640
All of.....	19	"	"	637.40
All of.....	21	"	"	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	640
All of.....	29	"	"	640
All of.....	31	"	"	639.80
All of.....	33	"	"	640
W. ½ of.....	35	"	"	320
All of	1	22	7	639.20
All of.....	3	"	"	638.78
All of.....	5	"	"	640.40
All of.....	7	"	"	628.80
All of.....	9	"	"	640
All of.....	11	22	7	640
All of.....	13	"	"	640
All of.....	15	"	"	640
All of.....	17	"	"	640
All of.....	19	"	"	640
All of.....	21	"	"	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	640
All of.....	29	"	"	640
All of.....	31	"	"	640
All of.....	33	"	"	640
All of.....	35	"	"	640
All of.....	7	16	8	414.24
Forward.....	.....	.....	.....	147,085.78

Parts of section.	S.	T.	R.	Acres.
Brought forward...	.....	.....	.....	147,085.78
All of.....	19	16	8	405.64
All of.....	31	"	"	395.60
All of.....	7	17	8	577
All of.....	19	"	"	597.60
All of.....	31	"	"	594.28
All of.....	1	18	8	640
All of.....	3	"	"	640
All of.....	5	"	"	640
All of.....	7	"	"	634.96
All of.....	9	"	"	640
All of.....	11	"	"	640
All of.....	13	"	"	640
All of.....	15	"	"	640
All of.....	17	"	"	640
All of.....	19	"	"	633.84
All of.....	21	18	8	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	640
All of.....	29	"	"	640
All of.....	31	"	"	641.42
All of.....	33	"	"	635.20
All of.....	35	"	"	625.96
All of.....	1	19	8	641.68
All of.....	3	"	"	642.88
All of.....	5	"	"	640.64
All of.....	7	"	"	619.44
All of.....	9	"	"	640
Forward.....	.....	.....	.....	164,331.92

Parts of section.	S.	T.	R.	Acres.
Brought forward...	.....	.....	.....	164,331.92
All of.....	11	19	8	640
All of.....	13	"	"	640
All of.....	15	"	"	640
All of.....	17	"	"	640
All of.....	19	"	"	626.72
All of.....	21	"	"	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	640
All of.....	29	"	"	640
All of.....	31	"	"	636.96
All of.....	33	"	"	640
All of.....	35	"	"	640
All of.....	1	20	8	671.56
All of.....	3	"	"	665.86
All of.....	5	"	"	657.78
All of.....	7	"	"	607.20
All of.....	9	20	8	640
All of.....	11	"	"	640
All of.....	13	"	"	640
All of.....	15	"	"	640
All of.....	17	"	"	640
All of.....	19	"	"	614
All of.....	21	"	"	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	610
All of.....	29	"	"	640
All of.....	31	"	"	615.52
All of.....	33	"	"	640
All of.....	35	"	"	640
Total acres in Boone Co.....	.....	.....	.....	184,147.52

EXHIBIT F.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Sherman County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
All of.....	1	13	13	639.28
All of.....	3	"	"	639.90
All of.....	5	"	"	637.98
All of.....	7	"	"	616.74
All of.....	9	"	"	640
All of.....	11	"	"	640
N. W. ¼	13	"	"	160
N. ½ of.....	15	"	"	320
All of.....	17	"	"	588.12
N. ½ of.....	19	"	"	318.77
S. E. ¼ & W. ½.....	1	14	13	479.18
All of.....	3	"	"	637.21
All of.....	5	"	"	637.50
All of.....	7	14	13	629.98
All of.....	9	"	"	640
All of.....	11	"	"	640
All of.....	13	"	"	640
All of.....	15	"	"	640
All of.....	17	"	"	640
All of.....	19	"	"	630.24
All of.....	21	"	"	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	640
Forward.....	.....	.....	.....	13,974.90

323 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward				13,974.90
All of	29	14	13	640
All of	31	"	"	633.60
All of	33	"	"	640
All of	35	"	"	640
All of	1	15	13	639.10
All of	3	"	"	637.84
All of	5	"	"	639 34
All of	7	"	"	620.38
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	622.78
All of	21	"	"	640
All of	23	15	13	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	626.40
All of	33	"	"	640
All of	35	"	"	640
All of	1	16	13	627.80
All of	3	"	"	635.48
All of	5	"	"	635.16
All of	7	"	"	620.10
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
Forward				32,432.88

Parts of section.	S.	T.	R.	Acres.
Brought forward				32,432.88
All of	15	16	13	640
All of	17	"	"	640
All of	19	"	"	621.02
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	622.78
All of	33	"	"	640
All of	35	"	"	640
All of	1	13	14	614.99
All of	3	"	"	638.46
All of	5	"	"	638.86
All of	7	"	"	628.08
All of	9	13	14	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	633.28
All of	21	"	"	640
All of	23	"	"	640
N. ½ of	25	"	"	320
N. ½ of	27	"	"	320
All of	29	"	"	640
N. ½ of	31	"	"	319.84
All of	1	14	14	640.60
Forward				49,310.79

Parts of section.	S.	T.	R.	Acres.
Brought forward				49,310.79
All of	3	14	14	638.30
All of	5	"	"	530.11
All of	7	"	"	622.40
All of	9	"	"	519.10
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	599.50
All of	17	"	"	640
All of	19	"	"	621.34
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	574.58
All of	29	"	"	640
All of	31	"	"	626.40
All of	33	14	14	640
All of	35	"	"	612.95
All of	1	15	14	640.44
All of	3	"	"	637.58
All of	5	"	"	637.36
All of	7	"	"	625.98
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	522.29
All of	21	"	"	640
All of	23	"	"	640
Forward				67,319.72

Parts of section.	S.	T.	R.	Acres.
Brought forward				67,319.72
All of	25	15	14	640
All of	27	"	"	640
All of	29	"	"	563.10
All of	31	"	"	623.18
All of	33	"	"	640
All of	35	"	"	640
All of	1	16	14	628.88
All of	3	"	"	628.20
All of	5	"	"	629.86
All of	7	"	"	620.70
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	16	14	621.52
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	621.04
All of	33	"	"	640
All of	35	"	"	640
All of	1	13	15	638.44
All of	3	"	"	639.68
All of	5	"	"	640
All of	7	"	"	635.20
Forward				85,049.52

324 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
Brought forward ..	.....	.....	.....	85,049.52	All of..	3	14	15	640.16
All of	9	13	15	640	All of	5	"	"	640.16
All of	11	"	"	640	All of	7	"	"	626.32
All of	13	"	"	640	All of	9	"	"	640
All of	15	"	"	640	All of	11	"	"	640
All of	17	"	"	640	All of	13	"	"	640
All of	19	"	"	637.14	All of	15	"	"	640
All of	21	"	"	640	All of	17	"	"	640
All of	23	"	"	640	All of	19	"	"	625.98
All of	25	"	"	640	All of	21	"	"	640
All of	27	"	"	640	All of	23	"	"	640
All of	29	"	"	640	All of	25	"	"	640
All of	31	"	"	638.40	All of	27	"	"	640
All of	33	"	"	640	All of	29	"	"	640
All of	35	"	"	640					
All of	1	14	15	639.36	Forward	.....	.....	.....	103,577.04
Brought forward...	.....	.....	.....	103,577.04	All of	25	15	15	640
All of	31	14	15	631.74	All of	27	"	"	640
All of	33	"	"	640	All of	29	"	"	640
All of	35	"	"	640	All of	31	"	"	628.06
All of	1	15	15	639.38	All of	33	"	"	640
All of	3	"	"	638.88	All of	35	"	"	640
All of	5	"	"	639.68	All of	1	16	15	630.44
All of	7	"	"	626.30	All of..	3	"	"	632.06
All of	9	"	"	640	All of	5	"	"	630.48
All of	11	"	"	560	All of	7	"	"	610.36
All of	13	"	"	576.10	All of	9	"	"	640
All of	15	"	"	640	All of	11	"	"	640
All of	17	"	"	640	All of	13	"	"	640
All of	19	"	"	628.08					
All of	21	"	"	640	Forward	.....	.....	.....	121,248.60
All of	23	"	"	640					
Brought forward...	.....	.....	.....	121,248.60	E. ½ of	25	13	16	320
All of	15	16	15	640	E. ½ of	1	14	16	320.16
All of	17	"	"	593	E. ½ of	13	"	"	320
All of	19	"	"	628.24	E. ½ of	25	"	"	320
All of	21	"	"	573.20	E. ½ of	1	15	16	319.84
All of	23	"	"	640	E. ½ of	13	"	"	320
All of	25	"	"	640	E. ½ of	25	"	"	320
All of	27	"	"	578.40	E. ½ of	1	16	16	278.70
All of	29	"	"	640	E. ½ of	13	"	"	320
All of	31	"	"	629.78	E. ½ of	25	"	"	320
All of	33	"	"	640					
All of	35	"	"	603.50	Total acres in Sherman Co	.....	.....	.....	131,853.53
E. ½ of	1	13	16	320.11					
E. ½ of	13	"	"	320					

EXHIBIT G.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Howard County, Neb.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
All of	3	15	9	639.94	All of	1	16	9	638.92
N.E. ¼, E. ½ of N.W. ¼, E. ½ of S.E. ¼, & N.W. ¼ of S.W. ¼	5	"	"	359.16	All of	3	"	"	634.54
					All of	5	"	"	634.02
					All of	7	"	"	615.80
W. ½ of N E. ¼, N.W. ¼, N.W. ¼ of S. E. ¼, N. E. ½ of S.W. ¼, & lots numbered 3, 4, 5, and 6	7	"	"	429.26	All of	9	"	"	640
					All of	11	"	"	640
					All of	13	"	"	640
					All of	15	"	"	640
					All of	17	"	"	640
N. E. ¼ of S.W. ¼, lot No. 2, & N. ½ of	9	"	"	389.50	N. ½ of N.W. ¼, W. ½ of S.W. ¼, & E. ½ of	19	"	"	462.73
Lots 1 and 2, S. ½ of N. W. ¼, & S.W. ¼	17	"	"	329.50	Forward	.....	.....	.....	8,650.29
N. ½ of	19	"	"	315.92					

325 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				8,650.29
All of	21	16	9	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
S. W. ¼ & N. ½ of	31	"	"	463.20
All of	33	"	"	640
All of	35	"	"	640
W. ½ of	5	14	10	319.41
S. E. ¼ & N. W. ¼	7	"	"	315.17
All of	1	15	10	639
All of	3	"	"	638.46
All of	5	"	"	637.92
N. ½ of	7	"	"	312.60
All of	9	"	"	640
All of	11	15	10	640
Lots numbered 1, 2, 3, 4, 9, & 10, S. E. ¼ of S.W. ¼, & N.W. ¼ of N.W. ¼	13	"	"	284.60
N. ½ of N. E. ¼, S.W. ¼ of N. E. ¼, E. ½ of N. W. ¼, N. W. ¼ of N. W. ¼, S. E. ¼ of S. E. ¼, & S.W. ¼ of S.W. ¼	15	"	"	320
Lots numbered 2, 5, 6, 7, & 8	17	"	"	205.60
S. ½ of N. E. ¼, S. ½ of N.W. ¼, N.W. ¼ of N. W. ¼, & S. ½	19	"	"	508.22
Forward				19,054.47

Parts of section.	S.	T.	R.	Acres.
Bro't forward				19,054.47
Lot number 2, S. ½ of N. E. ¼, N.W. ¼ of N. E. ¼, & S. ½	21	15	10	463.50
S. E. ¼ of N. E. ¼, W. ½ of S. E. ¼, & S.W. ¼	23	"	"	280
Lots numbered 3 & 4 and S. E. ¼ of N. E. ¼	25	"	"	122.50
S. W. ¼ and N. ½	27	"	"	480
All of	29	"	"	640
S. ½ of	31	"	"	315.61
N. W. ¼	33	"	"	160
E. ½ of N.W. ¼	35	"	"	80
All of	1	16	10	638.28
All of	3	"	"	636.60
All of	5	16	10	634.04
All of	7	"	"	621.50
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	622.78
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
Forward				30,511.28

Parts of section.	S.	T.	R.	Acres.
Bro't forward				30,511.28
All of	29	16	10	640
All of	31	"	"	622.88
All of	33	"	"	640
All of	35	"	"	640
All of	1	14	11	640.64
All of	3	"	"	640.38
All of	5	"	"	638.56
All of	7	"	"	631.20
All of	9	"	"	640
All of	11	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	632.56
All of	29	"	"	640
S. E. ¼ & N. ½ of	1	15	11	479
Lots numbered 3, 4, 5, 6, 8, & 9	3	"	"	218.24
N. W. ¼	5	"	"	159.78
All of	7	"	"	625.92
S. ½ of N.W. ¼ & S. ½	9	"	"	400
N.W. ¼ of S. E. ¼, N. E. ¼ of S.W. ¼, and lot No. 2	11	"	"	117.80
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	627 60
All of	21	"	"	640
Forward				43,986.52

Parts of section.	S.	T.	R.	Acres.
Bro't forward				43,986.52
S. ½ of N. E. ¼, N. W. ¼, & S. ½	23	15	11	560
S.W. ¼ & N. ½	25	"	"	480
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	628.38
All of	33	"	"	640
All of	35	"	"	640
All of	1	16	11	634.28
All of	3	"	"	634.60
All of	5	"	"	636.32
Lots No. 1, 2, 3, 5, & 6, S. E. ¼ of N. E. ¼, & S. E. ¼ of S.W. ¼	7	"	"	299.60
All of	9	"	"	640
All of	11	16	11	640
All of	13	"	"	640
All of	15	"	"	640
N.E. ¼, N.E. ¼ of N.W. ¼, and lots No. 5 & 6	17	"	"	274.70
S. ½ of	19	"	"	311 80
S.E. ¼, N. ½ of S.W. ¼, S. E. ¼ of S.W. ¼, & N. ½	21	"	"	600
All of	23	"	"	640
All of	25	"	"	640
N. ½ of N.W. ¼, S.E. ¼ of N. W. ¼, N. E. ¼ of S. W. ¼, lot No. 2, & E ½	27	"	"	528
Forward				55,876.20

326 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				55,876.20
S. ½ of	29	16	11	320
All of	31	"	"	622.64
S. E. ¼	33	"	"	160
N. W. ¼, N. E. ¼ of S. W. ¼, & E. ½	35	"	"	520
N. ½ of	3	13	12	320.16
All of	5	"	"	640.06
N. ½ of	7	"	"	318
N. W. ¼	9	"	"	160
All of	1	14	12	639
All of	3	"	"	639.12
N. E. ¼, E. ½ of S. E. ¼, S. ½ of S. W. ¼, E. ½ of N. W. ¼, & N. W. ¼ of N. W. ¼	5	"	"	438.96
All of	7	"	"	630.48
Bro't forward				66,877.00
All of	31	14	12	635.68
All of	33	"	"	640
All of	35	"	"	640
All of	1	15	12	640.18
All of	3	"	"	639 68
All of	5	"	"	639.04
All of	7	"	"	625.76
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	627.74
All of	21	"	"	640
Bro't forward				81,844.44
All of	9	16	12	640
All of	11	"	"	640
W. ½ of N. E. ¼, S. E. ¼ of N. E. ¼, N. W. ¼, & S. ½	13	"	"	600
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	626.78
All of	21	"	"	640
All of	23	"	"	640
N. ½ of	9	14	12	320
N. ½ of S. E. ¼, & W. ½ of S. W. ¼	9	"	"	160
All of	11	"	"	640
All of	13	"	"	640
N. E. ¼, N. E. ¼ of N. W. ¼, E. ½ of S. W. ¼, & S. W. ¼ of S. W. ¼	15	"	"	320
All of	17	"	"	640
All of	19	"	"	632.38
All of	21	"	"	640
S. ½ of	25	"	"	320
All of	27	"	"	640
All of	29	"	"	640
Forward				66,877
All of	25	15	12	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	629.60
All of	33	"	"	640
All of	35	"	"	640
Lots numbered 1, 2, 3, 4, 5, 6, & 7, & S. E. ¼ of N. E. ¼	1	16	12	313.60
All of	3	"	"	635.86
All of	5	"	"	635.74
All of	7	"	"	624.56
Forward				81,844.44
All of	25	16	12	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	624.16
All of	33	"	"	640
All of	35	"	"	640
All of	23	15	12	640
Total acres in Howard Co.				91,375.38

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Greeley County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
All of	1	17	9	638.34
All of	3	"	"	642.34
All of	5	"	"	641.92
All of	7	"	"	640.88
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	640.32
All of	21	"	"	640
All of	23	"	"	640
All of	25	17	9	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	639.90
All of	33	"	"	640
All of	35	"	"	640
All of	1	18	9	642.18
All of	3	"	"	642
All of	5	"	"	639.42
All of	7	"	"	624.74
Forward				14,072.04

327 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
Bro't forward				14,072.04	All of	35	18	9	640
All of	9	18	9	640	All of	1	19	9	643.52
All of	11	"	"	640	All of	3	"	"	639.52
All of	13	"	"	640	All of	5	"	"	639.10
All of	15	"	"	640	All of	7	"	"	625.92
All of	17	"	"	640	All of	9	"	"	640
All of	19	"	"	628.96	All of	11	"	"	640
All of	21	"	"	640	All of	13	"	"	640
All of	23	"	"	640	All of	15	"	"	640
All of	25	"	"	640	All of	17	"	"	640
All of	27	"	"	640	All of	19	"	"	628.32
All of	29	"	"	640	All of	21	"	"	640
All of	31	"	"	637.44					
All of	33	"	"	640	Forward				30,034.72
Bro't forward				30,034.72	All of	13	20	9	640
All of	23	19	9	640	All of	15	"	"	640
All of	25	"	"	640	All of	17	"	"	640
All of	27	"	"	640	All of	19	"	"	623.84
All of	29	"	"	640	All of	21	"	"	640
All of	31	"	"	625.44	All of	23	"	"	640
All of	33	"	"	640	All of	25	"	"	640
All of	35	"	"	640	All of	27	"	"	640
All of	1	20	9	645.42	All of	29	"	"	640
All of	3	"	"	646.86	All of	31	"	"	626.72
All of	5	"	"	649.22	All of	33	"	"	640
All of	7	"	"	627.60	All of	35	"	"	640
All of	9	"	"	640					
All of	11	"	"	640	Forward				45,999.82
Bro't forward				45,999.82	All of	27	17	10	640
All of	1	17	10	645.08	All of	29	"	"	640
All of	3	"	"	639.34	All of	31	"	"	641.18
All of	5	"	"	638.44	All of	33	"	"	640
All of	7	"	"	633.38	All of	35	"	"	640
All of	9	"	"	640	All of	1	18	10	636.56
All of	11	"	"	640	All of	3	"	"	640.66
All of	13	"	"	640	All of	5	"	"	641.98
All of	15	"	"	640	All of	7	"	"	633.02
All of	17	"	"	640	All of	9	"	"	640
All of	19	"	"	639.58	All of	11	"	"	640
All of	21	"	"	640	All of	13	"	"	640
All of	23	"	"	640					
All of	25	"	"	640	Forward				61,988.04
Bro't forward				61,988.04	All of	5	19	10	637.20
All of	15	18	10	640	All of	7	"	"	628.18
All of	17	"	"	640	All of	9	"	"	640
All of	19	"	"	626.78	All of	11	"	"	640
All of	21	"	"	640	All of	13	"	"	640
All of	23	"	"	640	All of	15	"	"	640
All of	25	"	"	640	All of	17	"	"	640
All of	27	"	"	640	All of	19	"	"	630.40
All of	29	"	"	640	All of	21	"	"	640
All of	31	"	"	634.58	All of	23	"	"	640
All of	33	"	"	640	All of	25	"	"	640
All of	35	"	"	640	All of	27	"	"	640
All of	1	19	10	642.62					
All of	3	"	"	643.76	Forward				77,751.56
Bro't forward				77,751.56	All of	19	20	10	614.78
All of	29	19	10	640	All of	21	"	"	640
All of	31	"	"	637.34	All of	23	"	"	640
All of	33	"	"	640	All of	25	"	"	640
All of	35	"	"	640	All of	27	"	"	640
All of	1	20	10	651.22	All of	29	"	"	640
All of	3	"	"	648.18	All of	31	"	"	614.72
All of	5	"	"	639.68	All of	33	"	"	640
All of	7	"	"	626.40	All of	35	"	"	640
All of	9	"	"	640	All of	1	17	11	642.60
All of	11	"	"	640	All of	3	"	"	642.16
All of	13	"	"	640	All of	5	"	"	642.02
All of	15	"	"	640					
All of	17	"	"	640	Forward				93,710.66

328 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward	....	....	.....	93,710.66
All of	7	17	11	639.20
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	642.40
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
N. E. ¼, N. W. ¼ of S. E. ¼, N. ½ of S. W. ¼, & S. W. ¼ of S. W. ¼	31	"	"	320.09

Parts of section.	S.	T.	R.	Acres.
All of	33	17	11	640
All of	35	"	"	640
All of	1	18	11	641.18
All of	3	"	"	640
All of	5	"	"	640.42
All of	7	"	"	628.54
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
Forward	....	....	.....	108,742.49

Parts of section.	S.	T.	R.	Acres.
Bro't forward	....	....	.....	108,742.49
All of	19	18	11	635.12
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	634.58
All of	33	"	"	640
All of	35	"	"	640
All of	1	19	11	637.84
All of	3	"	"	635.44
All of	5	"	"	634.96
All of	7	"	"	626.58

Parts of section.	S.	T.	R.	Acres.
All of	9	19	11	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	624.70
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	625.68
Forward	....	....	.....	124,677.39

Parts of section.	S.	T.	R.	Acres.
Bro't forward	....	....	.....	124,677.39
All of	33	19	11	640
All of	35	"	"	640
All of	1	20	11	644
All of	3	"	"	641.26
All of	5	"	"	640.72
All of	7	"	"	637.84
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	625.78
All of	21	"	"	640
All of	23	"	"	640

Parts of section.	S.	T.	R.	Acres.
All of	25	20	11	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	626.32
All of	33	"	"	640.00
All of	35	"	"	640
All of	1	17	12	636.48
All of	3	"	"	633.12
N. E. ¼, E. ½ of S. E. ¼, lots Nos. 4, 5, 6, 8, & 9, S. W. ¼ of S. W. ¼	5	"	"	453.66
W. ½ of N. E. ¼, S. E. ¼ of N. E. ¼, N. W. ¼ & S. ½	7	"	"	598.66
Forward	....	....	.....	139,775.23

Parts of section.	S.	T.	R.	Acres.
Bro't forward	....	....	.....	139,775.23
N. ½ of S. E. ¼, lots 1 & 2, & N. ½	9	17	12	447.70
All of	11	"	"	640
All of	13	"	"	640
S. E. ¼	15	"	"	160
All of	17	"	"	640
All of	19	"	"	647.12
All of	21	"	"	596.80
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	576.10
All of	29	"	"	640
All of	31	"	"	640.38
S. E. ¼ of S. E. ¼, N. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, & N. ½	33	"	"	480

Parts of section.	S.	T.	R.	Acres.
All of	35	17	12	571.40
All of	1	18	12	640.38
All of	3	"	"	639.80
All of	5	"	"	641.32
All of	7	"	"	636.24
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
N. ½ of N. E. ¼, S. E. ¼ of N. E. ¼, S. E. ¼ of S. E. ¼, & S. W. ¼ of S. W. ¼	19	"	"	199.70
Forward	....	....	.....	153,692.17

329 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
Bro't forward	....	.....	.....	153,692.17	All of	5	19	12	637.12
N. ½ of N. W. ¼	19	18	12	79.67	All of	7	"	"	630.08
All of	21	"	"	640	All of	9	"	"	640
All of	23	"	"	640	All of	11	"	"	640
All of	25	"	"	640	All of	13	"	"	640
All of	27	"	"	640	All of	15	"	"	640
E. ½ of S. W. ¼, E. ½ of N. W. ¼, N. W. ¼ of N. W. ¼, & E. ½	29	"	"	520	All of	17	"	"	640
					All of	19	"	"	628.80
					All of	21	"	"	640
Lots 2 & 3, W. ½ of N. E. ¼, N. W. ¼ of S. E. ¼, & W. ½	31	"	"	497.48	All of	23	"	"	640
					All of	25	"	"	640
All of	33	"	"	640	All of	27	"	"	640
All of	35	"	"	640	Forward	.....	.....	.....	167,559.30
All of	1	19	12	636.38					
All of	3	"	"	637.60					

Bro't forward	....	.....	.....	167,559.30	All of	17	20	12	640
All of	29	19	12	640	All of	19	"	"	621.10
All of	31	"	"	631.44	All of	21	"	"	640
All of	33	"	"	640	All of	23	"	"	640
All of	35	"	"	640	All of	25	"	"	640
All of	1	20	12	623.30	All of	27	"	"	640
All of	3	"	"	620.98	All of	29	"	"	640
All of	5	"	"	613.76	All of	31	"	"	626.24
All of	7	"	"	615.84	All of	33	"	"	640
All of	9	"	"	640	All of	35	"	"	640
All of	11	"	"	640					
All of	13	"	"	640	Total acres in Greeley Co	.....	.....	.....	181,511.96
All of	15	"	"	640					

EXHIBIT H.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Valley County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
All of	1	17	13	634.24	All of	27	17	13	640
All of	3	"	"	632.16	All of	29	"	"	640
All of	5	"	"	638.42	All of	31	"	"	643.84
All of	7	"	"	646.90	All of	33	"	"	640
All of	9	"	"	640	All of	35	"	"	640
All of	11	"	"	640	All of	1	18	13	618.67
All of	13	"	"	640	All of	3	"	"	640.92
All of	15	"	"	640	All of	5	"	"	642.72
All of	17	"	"	640	All of	7	"	"	631.06
All of	19	"	"	648.70	All of	9	"	"	640
All of	21	"	"	640	All of	11	"	"	601.31
All of	23	"	"	640					
All of	25	"	"	640	Forward	.....	.....	.....	15,338.94

Brought forward	....	.....	.....	15,358.94	All of	1	19	13	639.90
E. ½ of N. E. ¼, N. W. ¼ of N. E. ¼, S. W. ¼ of N. W. ¼, W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼, and lots 1, 5, 6, 7 & 8	13	18	13	446.60	All of	3	"	"	640.44
					All of	5	"	"	641.20
					All of	7	"	"	628.32
					All of	9	"	"	640
All of	25	"	"	640	All of	11	"	"	640
All of	17	"	"	640	All of	13	"	"	640
All of	19	"	"	633.74	All of	15	"	"	640
All of	21	"	"	640	All of	17	"	"	640
All of	23	"	"	640	All of	19	"	"	630.48
All of	25	"	"	632.20	All of	21	"	"	640
All of	27	"	"	640	All of	23	"	"	640
All of	29	"	"	640	All of	25	"	"	640
All of	31	"	"	636.08	All of	27	"	"	554.40
All of	33	"	"	640	All of	29	"	"	636.60
All of	35	"	"	640	Forward	.....	.....	.....	32,298.90

330 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward				32,298.90
All of	31	19	13	601.30
All of	33	"	"	625.30
All of	35	"	"	556.90
All of	1	20	13	621.04
All of	3	"	"	606.76
All of	5	"	"	604.28
All of	7	"	"	614.21
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	620.28
All of	21	"	"	640
All of	23	"	"	640
All of	25	20	13	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	622.04
All of	33	"	"	640
All of	35	"	"	640
All of	1	17	14	643.58
All of	3	"	"	651.14
All of	5	"	"	647.44
All of	7	"	"	646.38
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
Forward				49,959.55

Parts of section.	S.	T.	R.	Acres.
Brought forward				49,959.55
All of	15	17	14	640
All of	17	"	"	640
All of	19	"	"	645.98
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	641.44
All of	33	"	"	640
All of	35	"	"	640
All of	1	18	14	639.72
All of	3	"	"	645.62
All of	5	"	"	642.90
All of	7	"	"	634.40
All of	9	18	14	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	640
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	634.16
All of	33	"	"	640
All of	35	"	"	640
Forward				68,520.31

Parts of section.	S.	T.	R.	Acres.
Brought forward				68,520.31
All of	1	19	14	636.92
All of	3	"	"	635.16
All of	5	"	"	576.74
All of	7	"	"	632.64
All of	9	"	"	562.40
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	592.50
All of	17	"	"	640
All of	19	"	"	634.36
All of	21	"	"	638.94
All of	23	"	"	639.89
All of	25	"	"	552.90
All of	27	"	"	635.60
All of	29	"	"	640
All of	31	19	14	636.64
All of	33	"	"	640
All of	35	"	"	640
All of	1	20	14	610.62
All of	3	"	"	606.82
All of	5	"	"	612.12
All of	7	"	"	627.20
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	601.20
Forward				85,992.96

Parts of section.	S.	T.	R.	Acres.
Brought forward				85,992.96
All of	21	20	14	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	608.80
All of	31	"	"	630.72
All of	33	"	"	640
All of	35	"	"	640
All of	1	17	15	639.26
All of	3	"	"	638.78
All of	5	"	"	639.80
All of	7	"	"	639.20
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	17	15	640
All of	17	"	"	640
All of	19	"	"	638.40
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	639.14
All of	33	"	"	640
All of	35	"	"	640
All of	1	18	15	639.84
All of	3	"	"	738.06
All of	5	"	"	638.28
Forward				104,505.24

331 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
Brought forward ...	.....	.....	.....	122,379.86	All of.....	1	19	15	639.86
All of.....	7	18	15	630.08	All of.....	3	"	"	736.20
All of.....	9	"	"	640	All of.....	5	"	"	637.36
All of.....	11	"	"	640	All of.....	7	"	"	627.42
All of.....	13	"	"	640	All of.....	9	"	"	640
All of.....	15	"	"	640	All of.....	11	"	"	640
All of.....	17	"	"	640	All of.....	13	"	"	640
All of.....	19	"	"	636.22	All of.....	15	"	"	640
All of.....	21	"	"	640	All of.....	17	"	"	640
All of.....	23	"	"	640	All of.....	19	"	"	626.94
All of.....	25	"	"	640	All of.....	21	"	"	640
All of.....	27	"	"	640	All of.....	23	"	"	640
All of.....	29	"	"	640	All of.....	25	"	"	640
All of.....	31	"	"	640.54					
All of.....	33	"	"	640	Forward.....	.....	.....	.....	140,254.48
All of.....	35	"	"	640					

Brought forward ...	.....	.....	.....	140,254 48	All of.....	21	20	15	640
All of.....	27	19	15	640	All of.....	23	"	"	587.80
All of.....	29	"	"	640	All of.....	25	"	"	640
All of.....	31	"	"	624.26	All of.....	27	"	"	640
All of.....	33	"	"	640	All of.....	29	"	"	640
All of.....	35	"	"	640	All of.....	31	"	"	634.82
All of.....	1	20	15	607.82	All of.....	33	"	"	640
All of.....	3	"	"	613.96	All of.....	35	"	"	640
All of.....	5	"	"	549.49	E. ½ of.....	1	17	16	319.77
All of.....	7	"	"	627.98	E. ½ of.....	13	"	"	320
All of.....	9	"	"	543.50	E. ½ of.....	25	"	"	320
All of.....	11	"	"	640	E. ½ of.....	1	18	16	320.02
All of.....	13	"	"	640	E. ½ of.....	13	"	"	320
All of.....	15	"	"	561	E. ½ of.....	25	"	"	320
All of.....	17	"	"	640					
All of.....	19	"	"	632.80	Forward.....	.....	.....	.....	156,477.70

Brought forward ...	.....	.....	.....	156,477.70	E. ½ of.....	13	20	16	320
E. ½ of.....	1	19	16	319.80	E. ½ of.....	25	"	"	320
E. ½ of.....	13	"	"	320					
E. ½ of.....	25	"	"	320	Total acres in Valley Co.....	.....	.....	.....	158,395.72
E. ½ of.....	1	20	16	318.22					

(Indorsed:) Received and filed Feb. 8, 1875. Watson B. Smith, clerk.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Buffalo County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
N. ½ of N. E. ¼ & N. ½ of N. W. ¼.....	1	12	15	178.45	E. ½ of.....	1	12	16	322.08
All of.....	3	"	"	660.82					
All of.....	5	"	"	656.24	Total acres in Buffalo county...	.....	.....	.....	2,430.67
All of.....	7	"	"	613.08					

EXHIBIT K.

Part of section.	S.	T.	R.	Acres.	Part of section.	S.	T.	R.	Acres.
N. ½.....	23	14	6 E.	320	All.....	11	13	7	640
N. ½ S. E.	"	"	"	80	All.....	13	"	"	640
N. ½ S. W	"	"	"	80	N. ½ N. E.....	15	"	"	80
N. ½ N. E.....	25	"	"	60	All.....	1	14	"	623.04
S. E. N. E.....	"	"	"	60	All.....	3	"	"	605.52
All.....	1	13	7	651.60	All	5	"	"	603.92
All.....	3	"	"	657.44	All.....	9	"	"	640
N. ½ N. E. & S. E. N. E..	5	"	"	127.33	All.....	11	"	"	640
N. E. N. W.....	"	"	"	43.54	All	13	"	"	640
N. E. S. E.....	"	"	"	40	All.....	15	"	"	640
N. ½ N. E.....	9	"	"	80	All.....	17	"	"	640
N. E. N. W.....	9	"	"	40	All.....	19	"	"	603.1

332 EXHIBIT K—Continued.

Part of section.	S.	T.	R.	Acres.	Part of section.	S.	T.	R.	Acres.
All	21	14	7	640	S. W. ¼ and	19	13	9	237.02
All	23	"	"	640	S. ½ N. W	19	"	"	
All	25	"	"	640	N. W	21	"	"	160
All	27	"	"	640	N. ½ S. W. and	21	"	"	60
All	29	"	"	640	S. W. S. W	21	"	"	60
N. ½ N. E	31	"	"	60	N. E. S. E	23	"	"	40
S. E. N. E	31	"	"	60	N. W	27	"	"	160
N. E. S. E	31	14	7 E.	40	All	29	"	"	640
N. E. N. W	31	"	"	40	All	31	"	"	639.36
All	33	"	"	640	All	33	"	"	640
All	35	"	"	640	W. ½	17	14	9	320
All	13	15	7	640	E. ½	19	"	"	320
All	23	"	"	640	All	21	"	"	640
All	25	"	"	640	All	27	"	"	640
All	27	"	"	640	All	29	"	"	640
All	33	"	"	640	All	31	"	"	633.96
All	35	"	"	640	All	33	"	"	640
All	1	13	8	641.28	All	35	"	"	640
All	3	"	"	655.96	E. ½ N. W	7	12	10 E.	80
All	5	"	"	666.12	N. W. N. W	7	"	"	30.24
All	7	"	"	122.96	E. ½ S. W	7	"	"	80
All	9	"	"	640	W. ½ N. W	17	"	"	80
All	11	"	"	640	N. ½	19	"	"	301.95
All	13	"	"	640	S. W	23	"	"	160
All	15	"	"	640	S. ½ S. W	25	"	"	80
All	17	"	"	640	S. W. S. E	25	"	"	40
All	19	"	"	137.96	N. E	27	"	"	160
All	21	"	"	640	N. ½ N. E	35	"	"	80
All	23	"	"	640	Lots Nos. 3, 4, 5, & 6	5	13	"	135.34
All	25	"	"	640	Lots Nos. 1 & 7	5	"	"	53.20
All	27	"	"	640	N. ½	7	"	"	320
N. E. ¼ & N. ½ S. E	29	"	"	240	S. E. & E. ½ S. W	7	13	10	239
N. E. S. W	29	"	"	40	All	9	"	"	640
E. ½ N. W	29	"	"	60	E. ½ S. W	15	"	"	80
N. W. N. W	29	"	"	60	S. W. S. W	15	"	"	40
N. ½ N. E	33	"	"	60	E. ½	17	"	"	320
S. E. N. E	33	"	"	60	Lots Nos. 2, 3, 4, 5, 6, 7, & 8	19	"	"	269.80
N. ½ N. W	33	"	"	80					
All	35	13	8 E.	640	E. ½ S. E	29	"	"	80
All	3	14	"	616.44	Lots Nos. 1, 3, 4, & 5	29	"	"	163.90
All	5	"	"	613.36	N. E	31	"	"	160
All	7	"	"	86.64	N. ½ N. E	31	14	"	80
All	9	"	"	640	S. W. N. E	31	"	"	40
All	11	"	"	640	W. ½ S. E	31	"	"	80
All	13	"	"	640	W. ½	31	"	"	307
All	15	"	"	640	E. ½ N. W	3	11	11	79.82
All	17	"	"	640	W. ½ S. E	3	"	"	80
All	19	"	"	111.36	S. E. S. E	3	"	"	40
All	21	"	"	640	S. ½ S. E	19	"	"	80
All	23	"	"	640	S. E. S. W	19	12	11 E.	40
All	25	"	"	640	Lots 3, 4, 5, & 6	19	"	"	192.50
All	27	"	"	640	S. W	21	"	"	160
All	29	"	"	640	S. E. N. W	23	"	"	40
All	31	"	"	133.44	N. W. S. E	23	"	"	40
All	33	"	"	640	S. E. S. W	33	"	"	40
All	35	"	"	640	Not No. 7	1	"	"	42.60
All	19	15	"	97.28	N. E. N. E	9	"	"	40
All	29	"	"	640	Lots Nos. 1, 2, & 4	11	"	"	139.60
All	31	"	"	108.08	Lots Nos. 1 & 2	15	"	"	84.40
All	33	"	"	640	N. W. N. W	17	"	"	40
E. ½ N. E	1	12	9	87.49	S. W. S. E	17	"	"	40
N. W. N. E	3	"	"	47 90	S. E. S. W	17	"	"	40
E. ½ S. E	3	"	"	80	S. E. N. E	25	13	"	40
N. W	3	"	"	175.36	N. W. N. E	27	"	"	40
All	5	"	"	644.69	S. E. N. W	27	"	"	40
N. ½	7	"	"	325.43	W. ½ N. W	7	12	12	70.24
S. E	11	"	"	160	N. W. S. E	19	12	"	40
S. ½	13	"	"	320	S. E. N. W	29	"	"	40
All	1	13	9	638.72	N. E. N. W	31	"	"	40
N. E. N. E	3	"	"	40.08	Lots Nos. 7 & 8	27	13	"	58
N. E. S. E	3	"	"	40	Lots Nos. 4 & 5	33	"	"	60.61
W. ½ N. W	3	"	"	78.92	N. W. S. W	33	"	"	40
All	5	"	"	635.84	S. E. S. W	29	"	"	40
All	7	"	"	634.48	N. W. N. W	29	"	"	40
All	9	"	"	640	N. ½	29	"	1 W.	320
E. ½	11	"	"	320	N. ½ S. E. & N. ½ S. W.	29	"	"	160
N. ½ N. E. and	13	"	"	80	N. ½ N. E	31	"	"	80
N. ½ N. W	13	"	"	80	N. ½ N. W	31	"	"	121.50
All	17	"	"	640	S. W. N. W	31	"	"	
E. ½	19	"	"	320	N. W. S. W	31	"	"	40.37

Part of section.	S.	T.	R.	Acres.	Part of section.	S.	T.	R.	Acres.
N. ½	19	12	2 W.	322.67	All	27	13	4 W.	640
All	17	"	"	640	All	33	"	"	640
All	9	"	"	640	All	35	"	"	640
All	7	"	"	642	All	1	10	5	639.44
All	5	"	"	661	All	3	"	"	638.72
All	3	"	"	673.88	All	5	"	"	640.96
W. ½ N. W	1	"	"	89.90	All	7	"	"	635.76
All	19	13	"	641.72	All	9	"	"	640
All	21	"	"	640	All	11	"	"	640
All	27	"	"	640	All	15	"	"	640
All	29	"	"	640	All	17	10	5 W.	640
All	31	"	"	641.40	All	19	"	"	637.88
All	33	"	"	640	All	21	"	"	640
All	35	"	"	640	W. ½ N. W	27	"	"	80
All	5	11	3 W.	639.04	N. ½	29	"	"	320
All	7	"	"	638.52	W. ½ S. W	29	"	"	80
All	1	12	"	663.24	N. ½	31	"	"	319.33
All	3	"	"	649.89	N. ½ S. E. and	31	"	"	159.73
All	5	"	"	649.44	N. ½ S. W	31	"	"	
All	7	"	"	627.64	All	1	11	"	639.44
All	9	"	"	640	All	3	"	"	639.28
All	11	"	"	640	All	5	"	"	639.72
All	13	"	"	640	All	7	"	"	630.96
All	15	"	"	640	All	9	"	"	640
All	17	"	"	640	All	11	"	"	640
All	19	"	"	630.64	All	13	"	"	640
All	21	"	"	640	All	15	"	"	640
All	23	"	"	640	All	17	"	"	640
N. ½	25	"	"	320	All	19	"	"	630.64
All	27	"	"	640	All	21	"	"	640
All	29	12	3 W.	640	All	23	"	"	640
All	31	"	"	630.72	All	25	"	"	640
All	33	"	"	640	All	27	"	"	640
N. ½ N. E.	35	"	"	80	All	29	"	"	640
N. ½ N. W	35	"	"	80	All	31	"	"	632
All	19	"	"	622.68	All	33	"	"	640
All	21	"	"	640	All	35	"	"	640
All	23	"	"	640	All	13	12	"	640
All	25	"	"	640	All	23	"	"	640
All	27	"	"	640	All	25	"	"	640
All	29	"	"	640	All	27	"	"	640
All	31	"	"	635.28	S. ½	29	12	5 W.	320
All	33	"	"	640	S. ½	31	"	"	314.58
All	35	"	"	640	All	33	"	"	640
W. ½	5	10	4 W.	319.36	All	35	"	"	640
All	1	11	"	640.96	N. ½	1	9	6 W.	319.48
All	3	"	"	640.80	W. ½ S. W	1	"	"	80
All	5	"	"	640.56	All	3	"	"	639.60
All	7	"	"	623.16	All	5	"	"	639.24
All	9	"	"	640	All	7	"	"	635.56
All	11	"	"	640	All	9	"	"	640
All	13	"	"	640	N. ½	11	"	"	320
All	15	"	"	640	N. W	15	"	"	160
All	17	"	"	640	All	17	"	"	640
All	19	"	"	623.84	All	19	"	"	636.84
All	21	"	"	640	N. W	21	"	"	160
All	23	"	"	640	All	1	10	6 W.	640.40
All	27	"	"	640	All	3	"	"	640.36
All	29	"	"	640	All	5	"	"	640.12
All	31	"	"	626.20	All	7	"	"	628.56
W. ½	33	11	4 W.	320	All	9	"	"	640
All	1	12	"	645.44	All	11	"	"	640
All	3	"	"	647.62	All	13	"	"	640
All	5	"	"	649.36	All	15	"	"	640
All	7	"	"	618	All	17	"	"	640
All	9	"	"	640	All	19	"	"	633.16
All	11	"	"	640	All	21	"	"	640
All	13	"	"	640	All	23	"	"	640
All	15	"	"	640	All	25	"	"	640
All	17	"	"	640	All	27	"	"	640
All	19	"	"	619.28	All	29	"	"	640
All	21	"	"	640	All	31	10	6 W.	634.68
All	23	"	"	640	All	33	"	"	640
All	25	"	"	640	All	35	"	"	640
All	27	"	"	640	S. ½	1	11	"	320
All	29	"	"	640	S. ½ N. E	1	"	"	80
All	31	"	"	620.76	S. ½ N. W	1	"	"	80
All	33	"	"	640	All	11	"	"	640
All	35	"	"	640	All	13	"	"	640
E ½	23	13	"	320	All	15	"	"	640
All	25	"	"	640	All	21	"	"	640

334 EXHIBIT K—Continued.

Part of section.	S.	T.	R.	Acres.	Part of section.	S.	T.	R.	Acres.
All	23	11	6 W.	640	All	33	9	8	640
All	25	"	"	640	All	35	9	8 W.	640
All	27	"	"	640	S. E. & E. ½ S. W	23	10	"	240
All	29	"	"	640	All	25	"	"	640
All	31	"	"	627.84	E. ½ S. W. and	27	"	"	60
All	33	"	"	640	S. W. S. W	27	"	"	60
All	35	"	"	640	S. ½ N. E. & S. E	27	"	"	240
N. ½	3	8	7 W.	318.50	S. E. N. W	27	"	"	40
All	5	"	"	637.94	S. ½ S. E. and	31	"	"	156.68
N. ½	7	"	"	304.98	S. ½ S. W	31	"	"	
All	1	9	"	640.20	All	33	"	"	640
All	3	"	"	639.76	All	35	"	"	640
All	5	"	"	640.84	N. ½	3	7	9	320.60
All	7	"	"	636.12	All	5	"	"	639.40
All	9	"	"	640	E. ½	7	"	"	302
All	11	"	"	640	All	1	8	"	636.32
All	13	"	"	640	All	3	"	"	631.49
All	15	"	"	640	All	5	"	"	628 98
All	17	"	"	640	All	7	"	"	279.28
All	19	"	"	637.36	All	9	"	"	640
All	21	9	7 W.	640	All	11	"	"	640
All	23	"	"	640	All	13	"	"	640
All	25	"	"	640	All	15	"	"	640
All	27	"	"	640	All	17	"	"	640
All	29	"	"	640	All	19	"	"	288
All	31	"	"	639	All	21	"	"	640
All	33	"	"	640	All	23	"	"	640
All	35	"	"	320	All	25	"	"	640
All	1	10	"	640.40	All	27	"	"	640
S. ½ N. E. & S. E	3	"	"	240	All	29	"	"	640
E. ½ S. W	3	"	"	120	All	31	"	"	287.24
S. W. S. W	3	"	"		All	33	8	9 W.	640
S. E. N. W	3	"	"	40	N. ½	35	"	"	320
E. ½	9	"	"	320	S. ½ N. E	1	9	9	80
S. W. & E. ½ N. W	9	"	"	240	S. ½ N. W	1	"	"	80
All	11	"	"	640	S. ½	1	"	"	320
All	13	"	"	640	S. E	9	"	"	160
All	15	"	"	640	All	11	"	"	640
E. ½ & S. W	17	"	"	480	All	13	"	"	640
E. ½ N. W	17	"	"	60	All	15	"	"	640
S. W. N. W	17	"	"	60	S. ½ N. E. & S. E	17	"	"	240
All	19	"	"	627.48	E. ½ S. W. and	17	"	"	80
All	21	"	"	640	S. W. S. W	17	"	"	40
All	23	"	"	640	S. E. N. W	17	"	"	40
All	25	"	"	640	All	21	"	"	640
All	27	"	"	640	All	23	"	"	640
All	29	"	"	640	All	25	"	"	640
All	31	"	"	628.64	All	27	"	"	640
All	33	"	"	640	All	29	"	"	640
All	35	"	"	640	All	33	"	"	640
S. ½ S. E	25	11	"	80	All	35	"	"	640
S. ½ S. W	25	11	7 W.	80	All	1	7	10	633.68
S. ½	35	"	"	320	All	3	"	"	636.60
All	1	8	8	637.90	All	5	"	"	636
All	3	"	"	638.32	All	7	"	"	646
All	5	"	"	638.84	All	9	"	"	640
All	7	"	"	596.60	All	11	"	"	640
All	9	"	"	640	All	13	"	"	640
All	11	"	"	640	All	15	"	"	640
N ½	13	"	"	320	All	17	"	"	640
All	15	"	"	640	All	19	"	"	637.84
All	17	"	"	640	N. ½	21	7	10 W.	320
All	19	"	"	597.63	N. ½ S. E. and	21	"	"	80
N. ½	21	"	"	320	N. ½ S. W	21	"	"	80
N. ½	29	"	"	320	All	1	8	"	628.36
All	1	9	"	640.48	All	3	"	"	630.64
All	3	"	"	640.64	All	5	"	"	629.46
All	5	"	"	639.60	All	7	"	"	654.24
All	7	"	"	628	All	9	"	"	640
All	9	"	"	640	All	11	"	"	640
All	11	"	"	640	All	13	"	"	640
All	13	"	"	640	All	15	"	"	640
All	15	"	"	640	All	17	"	"	640
All	17	"	"	640	All	19	"	"	654.24
All	19	"	"	630.28	All	21	"	"	640
All	21	"	"	640	All	23	"	"	640
All	23	"	"	640	All	25	"	"	640
All	25	"	"	640	All	27	"	"	640
All	27	"	"	640	All	29	"	"	640
All	29	"	"	640	All	31	"	"	651.44
All	31	"	"	630.40	All	33	"	"	640

Parts of section.	S.	T.	R.	Acres.
All	35	8	10 W.	640
S. ½ S. E. and	23	9	"	80
S. ½ S. W.	23	"	"	80
All	25	"	"	640
S. ½	27	"	"	320
S. ½ N. E.	31	"	"	160.17
S. ½ N. W.	31	"	"	
S. ½	31	"	"	320.14
All	33	"	"	640
All	35	"	"	640
All	1	7	11 W.	638.32
All	3	"	"	636.76
All	5	"	"	636.56
All	7	"	"	602.64
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	607.20
All	21	"	"	640
All	23	"	"	640
N. ½	25	"	"	320
All	27	"	"	640
All	29	"	"	640
All	31	"	"	616.12
All	33	"	"	640
N. ½ N. E. and	35	"	"	80
N. ½ N. W.	35	"	"	80
N. ½ N. E. and	1	8	"	80
S. ½ N. W.	1	"	"	80
S. ½	1	"	"	320
S. ½	3	"	"	320
S. ½	7	"	"	300.58
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	600.24
All	21	"	"	640
All	23	8	11 W.	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	600.16
All	33	"	"	640
All	35	"	"	640
N. ½	1	6	12	318.24
N. ½ S. E.	1	6	12	80
N. ½ S.W.	1	"	"	80
All	3	"	"	636.86
All	5	"	"	639.04
All	7	"	"	633.92
All	9	"	"	640
N. ½	11	"	"	320
N. ½	17	"	"	320
All	1	7	"	640.96
All	3	"	"	642.64
All	5	"	"	641.20
All	7	"	"	634.84
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	634.04
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	7	12	640
All	31	"	"	633.40
All	33	"	"	640
All	35	"	"	640
S. ½ N. E.	13	8	12	80
S. ½ N. W.	13	"	"	80
S. ½	13	"	"	320
S. ½ S. E.	19	"	"	80
S. ½ S. W.	19	"	"	80
All	21	"	"	640

Parts of section.	S.	T.	R.	Acres.
All	23	8	12	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	6	13	649.01
All	3	"	"	641.82
All	5	"	"	642.20
All	7	"	"	636.96
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	634.64
All	21	"	"	640
N. ½	23	"	"	320
N. ½	27	"	"	320
N. ½	29	6	13 W.	320
All	1	7	13	641.32
All	3	"	"	646.24
All	5	"	"	645.08
All	7	"	"	637.48
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	635.20
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	635.08
All	33	"	"	640
All	35	"	"	640
S. ½	25	8	13	320
S. ½	27	"	"	320
S. ½ N. E.	33	"	"	80
S. ½ N. W.	33	"	"	80
S. ½	33	"	"	320
All	35	"	"	640
N. ½	3	5	14	321.68
N ½	5	"	"	324.50
N. ½	7	"	"	322.66
All	1	6	"	645.21
All	3	"	"	648.10
All	5	"	"	639.76
All	7	6	14	644.24
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	644.78
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640.40
All	33	"	"	640
N. ½	35	"	"	320
F. ½	1	7	14	320
S. ½ S. W	1	"	"	69.85
All	13	"	"	605.06
Lots 1 and 2	15	"	"	116.16
Lots 1 and 2	17	"	"	109.16
All	19	"	"	631.24
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640

336 SCHEDULE K—Continued.

Part of section.	S.	T.	R.	Acres.
All	1	5	15	640.16
All	3	"	"	641.64
All	5	"	"	637.12
All	7	"	"	641.84
All	9	"	"	640
N. ½	11	"	"	320
S. W. ¼	11	"	"	160
N. ½	17	"	"	320
All	1	6	15	641.24
All	3	"	"	641.88
All	5	"	"	642.36
All	7	"	"	626.56
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	632.96
All	21	"	"	640
All	23	"	"	640
All	25	"	"	642
All	27	"	"	640
All	29	"	"	640
All	31	"	"	639.60
All	33	"	"	640
All	35	"	"	640
Lots 1, 2, 3, & 4	13	7	15	101.40
S. ½ S. E. ¼	19	"	"	157.71
S. E. ¼ S. W. ¼	19	"	"	
S. ½ S. E. ¼	21	7	15	80
S. ½ S. W. ¼	21	"	"	80
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	630.64
All	33	"	"	640
All	35	"	"	640
E. ½	1	5	16	319.65
E. ½	13	"	"	320
E. ½	1	6	16	319.60
E. ½	13	"	"	320
E. ½	25	"	"	320
S. E. ¼	25	7	16	160
W. ½ N. E. ¼	5	12	10	155.89
W. ½ S. E. ¼	5	"	"	
W. ½	5	"	"	312
All	9	12	11	320
All	11	"	"	640
W. ½ N. E. ¼	15	"	"	80
W. ½ S. E. ¼	15	"	"	80
W. ½	15	"	"	320
All	17	"	"	640
All	19	12	11 W.	625.20
All	13	12	12	610
All	19	"	"	631.84
All	21	12	12	640
All	23	"	"	640
W. ½ N. E. ¼	25	"	"	80
W. ½ S. E. ¼	25	"	"	80
W. ½	25	"	"	320
All	27	"	"	640
All	29	"	"	640
All	31	"	"	639.68
All	33	"	"	640
N. W. ¼ N. E. ¼	35	13	10	40
N. ½ N. W. ¼	35	13	10	80
W. ½ N. E. ¼	1	11	13	159.44
W. ½ S. E. ¼	1	"	"	
W. ½	1	"	"	317.75
All	3	"	"	629.24
All	5	"	"	634.12
All	7	"	"	629.24
W. ½ N. E. ¼	9	"	"	80
W. ½ S. E. ¼	9	"	"	80
W. ½	9	"	"	320
All	25	12	13	640
All	27	"	"	640
All	31	"	"	631.84
All	33	"	"	640
All	35	"	"	640
All	1	11	14	638.60
All	3	"	"	635.28
All	5	"	"	638.50
All	7	11	14	630.76
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	630.68
All	21	"	"	640
All	7	11	15	632.68
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	647.28
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	653.80
All	33	"	"	640
E. ½	1	10	16	318.89
E. ½	13	11	16	320
E. ½	25	"	"	320
Total acres				375,660.83

EXHIBIT L.

Part of section.	S.	T.	R.	Acres.
North half	5	13	1 E.	323.60
W. ½ S. W. ¼	5	13	1 "	80
N. W. ¼	7	13	1 "	155.70
All	1	14	1 "	640
All	3	14	1 "	640
All	5	14	1 "	640
All	7	14	1 "	640
All	9	14	1 "	640
All	11	14	1 "	640
All	13	14	1 "	640
All	15	14	1 "	640
All	17	14	1 "	640
All	19	14	1 "	640
All	21	14	1 "	640
All	23	14	1 "	640
All	25	14	1 "	640
All	27	14	1 "	640
All	29	14	1 "	640
All	31	14	1 E.	640
All	33	14	1 "	640
N. ½ N. E.	35	14	1 "	80
N. ½ N. W.	35	14	1 "	80
S. ½ S. E.	9	15	1 "	80
S. ½ S. W.	9	15	1 "	80
S. ½	11	15	1 "	320
All	13	15	1 "	640
All	15	15	1 "	640
All	17	15	1 "	640
All	19	15	1 "	640
All	21	15	1 "	640
All	23	15	1 E.	640
All	25	15	1 "	640
All	27	15	1 "	640
All	29	15	1 "	640
All	31	15	1 "	640
All	33	15	1 "	640

Part of section.	S.	T.	R.	Acres.
All	35	15	1 E	640
All	1	14	2 "	640
All	3	14	2 "	640
All	5	14	2 "	640
All	7	14	2 "	640
All	9	14	2 "	640
All	11	14	2 "	640
All	13	14	2 "	640
All	15	14	2 "	640
All	17	14	2 "	640
All	19	14	2 "	640
All	21	14	2 "	640
All	23	14	2 "	640
All	25	14	2 "	320
N. ½	27	14	2 "	320
N. ½	27	14	2 "	80
N. ½ S. E. ¼	27	14	2 "	80
N. ½ S. W. ¼	29	14	2 "	640
All	1	15	2 "	80
S. ½ S. E. ¼	1	15	2 "	80
S. ½ S. W. ¼	7	15	2 "	80
S. ½ N. E. ¼	7	15	2 "	80
S. ½ N. W. ¼	7	15	2 "	320
S. ½	9	15	2 E	640
All	11	15	2 "	640
All	13	15	2 "	640
All	15	15	2 "	640
All	17	15	2 "	640
All	19	15	2 "	640
All	21	15	2 "	640
All	23	15	2 "	640
All	25	15	2 "	640
All	27	15	2 "	640
All	29	15	2 "	640
All	31	15	2 "	640
All	33	15	2 "	640
All	35	15	2 "	640
All	1	14	3 "	640
All	3	14	3 "	640
All	5	14	3 "	640
All	7	14	3 "	640
All	9	14	3 "	640
All	11	14	3 "	640
All	13	14	3 "	640
All	15	14	3 "	640
All	17	14	3 "	640
All	19	14	3 "	640
All	21	14	3 "	640
All	23	14	3 "	640
N. ½ N. E. ¼	29	14	3 "	80
N. ½ N. W. ¼	29	14	3 "	80
All	1	15	3 "	640
All	3	15	3 "	640
S. ½	5	15	3 "	320
All	7	15	3 E	640
All	9	15	3 "	640
All	11	15	3 "	640
All	13	15	3 "	640
All	15	15	3 "	640
All	17	15	3 "	640
All	19	15	3 "	640
All	21	15	3 "	640
All	23	15	3 "	640
All	25	15	3 "	640
All	27	15	3 "	640
All	29	15	3 "	640
All	31	15	3 "	640
All	33	15	3 "	640
All	35	15	3 "	640
All	1	14	4 "	640
All	3	14	4 "	640
All	5	14	4 "	640
All	7	14	4 "	640
All	9	14	4 "	640
All	11	14	4 "	640
All	13	14	4 "	640
All	15	14	4 "	640
All	17	14	4 "	640
All	19	14	4 "	640
N. ½	21	14	4 "	320
N. ½ S. E. ¼	21	14	4 "	80
N. ½ S. W. ¼	21	14	4 "	80

Part of section.	S.	T.	R.	Acres.
N. ½				320
All	1	15	4 E.	640
All	3	15	4 "	640
All	5	15	4 "	640
All	7	15	4 "	640
All	9	15	4 "	640
All	11	15	4 "	640
All	13	15	4 "	640
All	15	15	4 "	640
All	17	15	4 "	640
All	19	15	4 "	640
All	21	15	4 "	640
All	23	15	4 "	640
All	25	15	4 "	640
All	27	15	4 "	640
All	29	15	4 "	640
All	31	15	4 "	640
All	33	15	4 "	640
All	35	15	4 "	640
S. ½	35	16	4 "	320
All	1	14	5 "	640
All	3	14	5 "	640
All	5	14	5 "	640
All	7	14	5 "	640
All	9	14	5 "	640
All	11	14	5 "	640
All	13	14	5 "	640
All	15	14	5 "	640
All	17	14	5 "	640
All	19	14	5 "	640
N. ½ N. E. ¼	19	14	5 "	80
N. ½ N. W. ¼	19	14	5 "	80
N. ½ N. E. ¼	21	14	5 E.	80
N. ½ N. W. ¼	21	14	5 "	80
N. ½ N. E. ¼	23	14	5 "	80
N. ½ N. W. ¼	23	14	5 "	80
All	1	15	5 "	640
All	3	15	5 "	640
All	5	15	5 "	640
All	7	15	5 "	640
All	9	15	5 "	640
All	11	15	5 "	640
All	13	15	5 "	640
All	15	15	5 "	640
All	17	15	5 "	640
All	19	15	5 "	640
All	21	15	5 "	640
All	23	15	5 "	640
All	25	15	5 "	640
All	27	15	5 "	640
All	29	15	5 "	640
All	31	15	5 "	640
All	33	15	5 "	640
All	35	15	5 "	640
S. ½ N. E. ¼	31	16	5 "	80
S. ½ N. W. ¼	31	16	5 "	80
S. ½	31	16	5 "	320
S. ½ N. W. ¼	33	16	5 "	80
S. ½ N. E. ¼	33	16	5 "	80
S. ½	33	16	5 "	320
S. ½	35	16	5 "	320
All	1	14	6 E.	640
All	3	14	6 "	640
All	5	14	6 "	640
All	7	14	6 "	640
All	9	14	6 "	640
All	11	14	6 "	640
All	13	14	6 "	640
All	15	14	6 "	640
All	17	14	6 "	640
N. E. ¼	19	14	6 "	160
N. ½ N. W. ¼	19	14	6 "	80
N. ½	21	14	6 "	320
All	1	15	6 "	640
All	3	15	6 "	640
All	5	15	6 "	640
All	7	15	6 "	640
All	9	15	6 "	640
All	11	15	6 "	640
All	13	15	6 "	640
All	15	15	6 "	640
All	17	15	6 "	640
All	19	15	6 "	640

338 EXHIBIT L—Continued.

Part of section.	S.	T.	R.	Acres.	Part of section.	S.	T.	R.	Acres.
All	21	15	6 E.	640	All	27	14	1 W.	640
All	23	15	6 "	640	All	29	14	1 "	640
All	25	15	6 "	640	All	31	14	1 "	640
All	27	15	6 "	640	All	33	14	1 "	640
All	29	15	6 "	640	All	35	14	1 "	640
All	31	15	6 "	640	S. ½ N. E. ¼	23	15	1 "	80
All	33	15	6 "	640	S. E. ¼	23	15	1 "	160
All	35	15	6 "	640	E. ½ S. W. ¼	23	15	1 "	80
S. ½	31	16	6 "	320	S. W. ¼ S. W. ¼	23	15	1 "	40
S. ½ S. E. ¼	33	16	6 "	80	S. E. ¼ N. W. ¼	23	15	1 "	40
S. ½ S. W. ¼	33	16	6 "	80	All	25	15	1 "	640
S. W. ¼ S. E. ¼	35	16	6 "	40	All	27	15	1 "	640
S. ½ S. W. ¼	35	16	6 "	80	S. ½	29	15	1 W.	320
All	7	14	7 "	640	S. ½	31	15	1 "	320
S. W. ¼ S. E. ¼	1	15	7 "	40	All	33	15	1 "	640
S. ½ S. W. ¼	1	15	7 "	80	All	35	15	1 "	640
S. ½ N. E. ¼	3	15	7 "	80	All	1	13	2 "	640
S. ½ N. W. ¼	3	15	7 "	80	All	3	13	2 "	640
S. ½	3	15	7 "	320	All	5	13	2 "	640
N. W. ¼ N. E. ¼	5	15	7 "	40	All	7	13	2 "	640
S. ½ N. E.	5	15	7 "	80	All	9	13	2 "	640
S. ½	5	15	7 "	320	All	11	13	2 "	640
N. W. ¼	5	15	7 "	160	All	13	13	2 "	610
All	7	15	7 "	640	All	15	13	2 "	640
All	9	15	7 "	640	All	17	13	2 "	640
All	11	15	7 "	640	All	23	13	2 "	640
All	15	15	7 "	640	All	25	13	2 "	640
All	17	15	7 "	640	S. ½ N. E. ¼	1	14	2 "	80
All	19	15	7 "	640	S. ½ N. W. ¼	1	14	2 "	80
All	21	15	7 "	640	S. ½	1	14	2 "	320
All	29	15	7 "	640	S. ½ S. E. ¼	9	14	2 "	80
All	31	15	7 "	640	S. ½ S. W. ¼	9	14	2 "	80
All	1	13	1 W.	640	S. ½ N. E. ¼	17	14	2 "	80
All	3	13	1 "	640	S. ½ N. W. ¼	17	14	2 "	80
All	5	13	1 "	640	All	19	14	2 "	640
All	7	13	1 "	640	All	21	14	2 "	640
All	9	13	1 "	640	All	23	14	2 "	640
All	11	13	1 "	640	All	25	14	2 "	640
All	15	13	1 W.	640	All	27	14	2 "	640
All	17	13	1 "	640	All	29	14	2 "	640
All	19	13	1 "	640	All	31	14	2 "	640
N. ½	21	13	1 "	320	All	33	14	2 "	640
N. ½ S. W. ¼	21	13	1 "	80	All	35	14	2 "	640
All	1	14	1 "	640	All	1	13	3 W.	640
All	3	14	1 "	640	All	3	13	3 "	640
All	5	14	1 "	640	S. ½ S. E. ¼	7	13	3 "	80
All	7	14	1 "	640	S. ½ S. W. ¼	7	13	3 "	80
All	9	14	1 "	640	All	9	13	3 "	640
All	11	14	1 "	640	All	11	13	3 "	640
All	13	14	1 "	640	All	13	13	3 "	640
All	15	14	1 "	640	All	15	13	3 "	640
All	17	14	1 "	640	All	17	13	3 "	640
All	19	14	1 "	640	All	25	14	3 "	640
All	21	14	1 "	640	All	25	14	3 "	640
All	23	14	1 "	640					
All	25	14	1 "	640	Total acreage				158,480.00

All	1	19	1 E.	640	S. ½ N. W. ¼	11	20	1 E.	80
All	3	"	"	640	S. ½	11	"	"	320
All	5	"	"	640	All	13	"	"	640
All	7	"	"	640	All	15	"	"	640
All	9	"	"	640	All	17	"	"	640
All	11	"	"	640	All	19	"	"	640
All	13	"	"	640	All	21	"	"	640
All	15	"	"	640	All	23	"	"	640
All	17	"	"	640	All	25	20	1 E.	640
All	19	"	"	640	All	27	"	"	640
All	21	"	"	640	All	29	"	"	640
All	23	"	"	640	All	31	"	"	640
N. ½	25	"	"	320	All	33	"	"	640
N. ½ S. E. ¼	"	"	"	80	All	35	"	"	640
N. ½ S. W. ¼	"	"	"	80	All	1	19	2 E.	640
All	27	"	"	640	All	3	"	"	640
All	29	"	"	640	All	5	"	"	640
N. ½	31	"	"	320	All	7	"	"	640
N. ½ N. E. ¼	33	"	"	80	All	9	"	"	640
N. ½ N. W. ¼	"	"	"	80	All	11	"	"	640
S. ½	7	20	1 E.	320	All	13	"	"	640
S. ½	9	"	"	320	All	15	"	"	640
S. ½ N. E. ¼	11	"	"	80	All	17	"	"	640

Part of section.	S.	T.	R.	Acres.
All	19	19	2 E.	640
All	21	"	"	640
All	23	"	"	640
N. ½	25	"	"	320
N. ½	27	"	"	320
N. ½	29	"	"	320
N. ½ S. E. ¼	29	"	"	80
N. ½ S. W. ¼	29	"	"	80
S. ½	1	20	2 E.	320
S. ½ S. E. ¼	3	"	"	80
S. ½ S. W. ¼	"	"	"	80
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	20	2 E.	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	19	3 E.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	1	20	3 E.	640
S. ½ N. E. ¼	3	"	"	80
S. ½ N. W. ¼	3	"	"	80
S. ½	3	"	"	320
S. ½	5	"	"	320
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	20	3 E.	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	19	4 E.	640
All	3	"	"	600
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
N. ½	21	"	"	320
N. ½	1	20	4 E.	320
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	20	4 E.	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640

Part of section.	S.	T.	R.	Acres.
All	27	20	4 E.	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
S. ½ S. E. ¼	31	21	4 E.	640
S. ½ S. W. ¼	"	"	"	80
S. ½	33	"	"	80
S. ½ N. E. ¼	35	"	"	320
S. ½ N. W. ½	35	"	"	80
S. ½	35	"	"	80
All	1	19	5 E.	326
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	21	"	"	640
N. ½ N. E. ¼	23	"	"	80
N. ½ N. W. ¼	"	"	"	80
N. ½ N. E. ¼	23	"	"	80
N. ½ N. W. ¼	"	"	"	80
All	1	20	5 E.	80
All	3	"	"	610
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
S. ½ N. E. ¼	31	21	5 E.	80
S. ½ N. W. ¼	31	"	"	80
S. ½	31	"	"	320
S. ½	33	"	"	320
S. ½	35	"	"	320
All	1	19	6 E.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	19	6 E.	640
All	17	"	"	640
N. ½ N. E. ¼	19	"	"	80
N. ½ N. W. ¼	19	"	"	80
N. ½ N. E. ¼	21	"	"	80
N. ½ N. W. ¼	21	"	"	80
N. ½	23	"	"	320
All	1	20	6 E.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
S. ½ N. E. ¼	31	21	6 E.	80
S. ½ N. W. ¼	31	"	"	80

EXHIBIT L—Continued.

Part of section.	S.	T.	R.	Acres.
S. ½	31	21	6 E.	320
S. ½	33	"	"	320
S. ½ S. E. ¼	35	"	"	80
S. ½ S. W. ¼	35	21	6 E.	80
N. E. ¼	1	19	7 E.	160
N. ½ S. E. ¼	1	"	"	80
N. W. ¼ S. W. ¼	1	"	"	40
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
S. ½ N. E. ¼	11	"	"	80
S. ½	11	"	"	320
S. ½ N. W. ¼	11	"	"	80
N. W. ¼ N. W. ¼	11	"	"	40
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
N. ½	19	"	"	320
N. ½ S. E. ¼	19	"	"	80
N. E. ¼ S. W. ¼	19	"	"	40
E. ½	21	"	"	320
E. ½ S. W. ¼	21	"	"	80
N. W. ¼ S. W. ¼	21	"	"	40
N. W. ¼	21	"	"	160
All	23	"	"	640
N. ½ N. E. ¼	25	"	"	80
N. E. ¼ N. W. ¼	25	"	"	40
S. ½	1	20	7 E.	320
S. ½ N. E. ¼	3	"	"	80
S. ½ N. W. ¼	3	"	"	80
S. ½	3	"	"	320
All	5	"	"	640
All	7	20	7 E.	640
N. ½	9	"	"	320
S. E. ¼	9	"	"	160
N. ½ S. W. ¼	9	"	"	80
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
E. ½	21	"	"	320
All	23	"	"	640
All	25	"	"	640
S. W. ¼	27	"	"	160
N. W. ¼ N. W. ¼	29	"	"	40
All	29	"	"	40
All	31	"	"	640
All	33	"	"	640
N. E. ¼	35	"	"	640
N. ½ N. W. ¼	1	19	8 E.	160
S. W. ¼ N. W. ¼	1	"	"	80
W. ½ S. W. ¼	1	"	"	40
N. E. ¼	1	"	"	80
N. ½ S. E. ¼	3	"	"	160
S. E. ¼ S. E. ¼	3	"	"	80
E. ½ N. E. ¼	3	"	"	40
N. ½ S. E. ¼	5	"	"	80
S. E. ¼ S. E. ¼	5	"	"	40
E. ½ N. W. ¼	5	"	"	80
N. W. ¼ N. W. ¼	5	"	"	40
N. E. ¼ N. E. ¼	9	19	8 E.	40
E. ½ S. E. ¼	9	"	"	80
S. W. ¼ S. E. ¼	9	"	"	40
N. W. ¼ S. W. ¼	9	"	"	40
E. ½ N. E. ¼	11	"	"	80
N. E. ¼ S. E. ¼	11	"	"	40
S. W. ¼ S. E. ¼	13	"	"	40
E. ½ S. W. ¼	13	"	"	80
S. W. ¼ N. W. ¼	13	"	"	40
S. ½ N. E. ¼	15	"	"	80
S. ½	15	"	"	320
N. W. ¼	15	"	"	160
S. ½ N. E. ¼	17	"	"	80
S. ½	17	"	"	320
N. W. ¼	17	"	"	160
All	21	"	"	640
S. W. ¼	23	"	"	160
W. ½ N. W. ¼	23	19	8 E.	80
E. ½ N. E. ¼	25	"	"	80
E. ½ S. E. ¼	25	"	"	80
S. ½ N. W. ¼	25	"	"	80
N. W. ¼ N. W. ¼	25	"	"	40
All	27	"	"	640
All	29	"	"	640
N. E. ¼	33	"	"	640
N. ½ S. E. ¼	33	"	"	160
S. E. ¼ S. E. ¼	33	"	"	80
N. ½ S. W. ¼	33	"	"	40
S. ½ S. E. ¼	35	"	"	80
N. ½ S. W. ¼	35	"	"	80
S. ½ N. W. ¼	35	"	"	80
S. ½ S. E. ¼	3	20	8 E.	80
S. ½ S. W. ¼	3	"	"	80
S. ½	5	"	"	320
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
E. ½	15	"	"	320
All	17	"	"	640
W. ½	21	"	"	320
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
E. ½	33	"	"	320
All	35	"	"	640
All	1	19	9 E.	640
N. ½	3	"	"	640
N. W. ¼	5	"	"	320
N. W. ¼ S. W. ¼	7	"	"	160
E. ½ S. E. ¼	7	"	"	40
N. W. ¼	9	"	"	80
N. W. ¼ S. W. ¼	11	"	"	160
N. ½	11	"	"	40
S. E. ¼	13	"	"	320
N. ½	13	"	"	160
S. E. ¼	15	"	"	320
N. E. ¼ S. W. ¼	15	"	"	160
N. E. ¼	15	"	"	40
S. W. ¼ S. E. ¼	17	"	"	160
N. E. ¼ N. E. ¼	17	19	9 E.	80
S. W. ¼ N. W. ¼	19	"	"	40
N. W. ¼ S. W. ¼	19	"	"	40
S. ½ N. E. ¼	19	"	"	40
S. ½ N. W. ¼	7	20	9 E.	80
S. ½	7	"	"	80
S. ½ S. W. ¼	9	"	"	320
S. ½ N. E. ¼	15	"	"	80
S. ½ N. W. ¼	15	"	"	80
S. ½	15	"	"	320
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
N. W. ¼ N. W. ¼	5	19	10 E.	640
All	3	"	"	40
N. W. ¼ N. W. ¼	7	"	"	640
N. ½ N. W. ¼	9	"	"	40
N. ½	17	"	"	80
S. ½	19	"	"	320
All	19	20	10 E.	320
All	29	"	"	640
All	31	"	"	640
All	33	20	10 E.	640
All	1	19	1 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640

Part of section.	S.	T.	R.	Acres.	Part of section.	S.	T.	R.	Acres.
All	11	19	1 W.	640	All	29	18	3 W.	640
All	13	"	"	640	All	31	"	"	640
All	15	"	"	640	N. ½	33	"	"	320
All	17	"	"	640	W. ½ S. E. ¼	33	"	"	80
All	19	"	"	640	S. W. ¼	33	"	"	160
All	21	"	"	640	All	1	19	3 W.	640
All	23	"	"	640	All	3	"	"	640
All	25	"	"	640	S. ½	5	"	"	320
All	27	"	"	640	S. ½	7	"	"	320
All	29	"	"	640	All	9	"	"	640
All	31	"	"	640	All	11	"	"	640
All	33	"	"	640	All	13	"	"	640
N. ½	35	"	"	320	All	15	"	"	640
N. ½ S. E. ¼	35	"	"	80	All	17	"	"	640
N. ½ S. W. ¼	35	"	"	80	All	19	"	"	640
All	13	20	1 W.	640	All	21	19	3 W.	640
All	15	"	"	640	All	23	"	"	640
S. ½ N. E. ¼	17	"	"	80	All	25	"	"	640
S. ½ N. W. ¼	17	"	"	80	All	27	"	"	640
All	19	"	"	640	All	29	"	"	640
All	21	"	"	640	All	31	"	"	640
All	23	"	"	640	All	33	"	"	640
All	25	"	"	640	All	35	"	"	640
All	27	"	"	640	S. ½	25	20	3 W.	320
All	29	20	1 W.	640	S. ½	35	"	"	320
All	31	"	"	640	All	1	18	4 W.	640
All	33	"	"	640	All	3	"	"	640
All	35	"	"	640	All	5	"	"	640
N. ½ N. E. ¼	5	18	1 W.	80	All	7	"	"	640
N. ½ N. W. ¼	5	"	"	80	All	9	"	"	640
All	1	18	2 W.	640	All	11	"	"	640
All	3	"	"	640	All	13	19	4 W.	640
All	5	"	"	640	All	15	"	"	640
All	7	"	"	640	All	17	"	"	640
All	9	"	"	640	All	13	"	"	640
All	11	"	"	320	S. E. ¼	15	"	"	160
N. ½	15	18	2 W.	80	S. ½	21	"	"	320
N. ½ N. E. ¼	15	"	"	80	All	23	"	"	640
N. ½ N. W. ¼	17	"	"	640	All	25	"	"	640
All	19	"	"	640	All	27	"	"	640
All	1	19	2 W.	640	E. ½	29	"	"	320
All	3	"	"	640	S. W. ¼	29	"	"	160
All	5	"	"	640	All	31	"	"	640
All	7	"	"	640	All	33	"	"	640
All	9	"	"	640	All	35	"	"	640
All	11	"	"	640	All	1	18	5 W.	640
All	13	"	"	640	S. ½	3	"	"	320
All	15	"	"	640	All	9	"	"	640
All	17	"	"	640	All	11	"	"	640
All	19	"	"	640	All	13	"	"	640
All	21	"	"	640	All	15	"	"	640
All	23	"	"	640	All	17	"	"	640
All	25	"	"	640	All	19	"	"	640
All	27	"	"	640	All	21	"	"	640
All	29	"	"	640	All	13	15	7 W.	640
All	31	"	"	640	Lots 1, 2, 3, & 4	15	"	"	160
All	33	"	"	640	Lots 1, 2, 3, & 4	17	"	"	40
All	35	"	"	640	All	19	"	"	640
All	13	20	2 W.	640	All	21	"	"	640
All	15	"	"	640	All	23	"	"	640
All	21	"	"	640	All	27	"	"	640
All	23	"	"	640	All	29	"	"	640
All	25	"	"	640	All	31	"	"	640
All	27	"	"	640	All	1	14	8 W.	640
All	29	"	"	640	All	3	"	"	640
All	31	"	"	640	All	5	"	"	640
All	33	20	2 W.	640	All	7	"	"	640
All	35	"	"	640	All	9	"	"	640
All	1	18	3 W.	640	All	11	"	"	640
All	3	"	"	640	All	15	"	"	640
All	5	"	"	640	All	17	"	"	640
All	7	"	"	640	All	19	"	"	640
All	9	"	"	640	All	21	"	"	640
All	11	"	"	640	All	29	"	"	640
All	13	"	"	640	All	31	"	"	640
All	15	"	"	640	Lots 1, 2, 3, & 4	13	15	8 W.	40
All	17	"	"	640	Lots 1, 2, 3, & 4	15	"	"	40
All	19	"	"	640	Lots 1, 2, 3, & 4	17	"	"	40
All	21	"	"	640	All	7	"	"	640
All	23	"	"	640	All	19	"	"	640
All	27	"	"	640	All	21	"	"	640

342 EXHIBIT L—Continued.

Part of section.	S.	T.	R.	Acres.
All	23	15	8 W.	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
W. ½ N. E. ¼	1	13	9 W.	80
W. ½ S. E. ¼	1	"	"	80
W. ½	1	"	"	320
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	17	"	"	640
N. ½	19	"	"	320
N. ½ S. E. ¼	19	"	"	80
S. W. ¼ S. E. ¼	19	"	"	40
S. W. ¼	19	"	"	160
All	1	14	9 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	11	9 W.	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	15	9 W.	640
S. E. ¼	9	"	"	160
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
S. E. ¼	17	"	"	160
S. ½	19	"	"	320
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	13	10 W.	640
All	3	"	"	640
All	5	13	10 W.	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
N. ½	25	"	"	320
N. ½ S. E. ¼	25	"	"	80
N. ½ S. W. ¼	25	"	"	80
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	1	14	10 W.	640
All	3	"	"	640
E. ½	9	"	"	320
S. W. ¼	9	"	"	160
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	14	10 W	640
All	21	"	"	640
All	23	14	10 W.	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
S. fractional ½	25	15	10 W.	320
E. " ½	35	15	10 W.	240
All	1	12	11 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	1	13	11 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	13	11 W.	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
S. ½ N. E. ¼	13	14	11 W.	80
S. ½ N. W. ¼	13	"	"	80
S. ½	13	"	"	320
S. ½	21	"	"	320
S. ½	23	"	"	320
All	25	"	"	640
All	27	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	12	12 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	15	"	"	640
All	17	"	"	640
All	1	13	12 W.	640
S. ½	3	"	"	320
S. ½	7	13	12 W.	320
E. ½	9	"	"	320
S. W. ¼	9	"	"	160
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	12	13 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
E. ½	13	13	13 W.	320
S. W. ¼	13	"	"	160

343 EXHIBIT L—Continued.

Part of section.	S.	T.	R.	Acres.	Part of section.	S.	T.	R.	Acres.
S. ½	15	13	13 W.	320	All	33	13	14 W.	640
S. ½	19	"	"	320	All	35	"	"	640
All	21	"	"	640	All	1	11	15 W.	640
All	23	"	"	640	All	3	"	"	640
All	25	"	"	640	All	5	"	"	640
All	27	"	"	640	S. ½ N. E. ¼	1	12	15 W.	80
All	29	"	"	640	S. ½ N. W. ¼	1	"	"	80
All	31	"	"	640	S. ½	1	"	"	320
All	33	"	"	640	All	9	"	"	640
All	35	"	"	640	All	11	"	"	640
All	1	12	14 W.	640	All	13	"	"	640
All	3	"	"	640	All	15	"	"	640
All	5	"	"	640	All	17	"	"	640
All	7	"	"	640	All	19	"	"	640
All	9	"	"	640	All	21	"	"	640
All	11	"	"	640	All	23	"	"	640
All	13	"	"	640	All	25	"	"	640
All	15	"	"	640	All	27	"	"	640
All	17	"	"	640	All	29	"	"	640
All	19	"	"	640	All	31	"	"	640
All	21	"	"	640	All	33	"	"	640
All	23	"	"	640	All	35	"	"	640
All	25	"	"	640	E. ½	1	11	16 W.	320
All	27	"	"	640	E. ½	13	12	16 W.	320
All	29	"	"	640	E. ½	25	"	"	320
All	31	"	"	640					
All	33	"	"	640					374,720
All	35	"	"	640					158,480
S. ½	25	13	14 W.	320					
S. ½	27	"	"	320	Total acres				533,200

Upon the back of said bill and schedules appear endorsements in words and figures following, to wit:

United States circuit court, district of Nebraska. The United States *vs.* The Burlington and Missouri River Railroad Company in Nebraska. Bill of complaint. James Neville, U. S. att'y, dist. Neb. Filed Feb'y 8, 1875. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on said 8th day of February, 1875' a subpœna was issued in said case; which said subpœna is in words and figures following, to wit:

UNITED STATES OF AMERICA, } *ss.*:
District of Nebraska, }

The President of the United States of America to the Burlington and Missouri River Railroad Company in Nebraska, Greeting:

We command you and each of you that you appear before the judges of the circuit court of the United States for the district of Nebraska, at Omaha, on the first Monday in March next, it being the first day of March, A. D. 1875, to answer to the bill of complaint of the United States this day filed in the office of the clerk of said court, and then and there to receive and abide by such order and decree as shall then or thereafter be made, upon pain of the said bill being taken as confessed against you and decree be pronounced accordingly.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 8th day of February, A. D. 1875, and of the Independence the 99' year.

[SEAL.] WATSON B. SMITH, *Clerk.*

MEMORANDUM.—The above-named defendant is notified that unless it enter its appearance in the clerk's office of said court,
344 at Omaha aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against it as confessed, and a decree entered thereon accordingly.

WATSON B. SMITH, *Clerk.*

Upon the back of said subpœna appear endorsements in words and figures following, to wit:

No. 113, doc. C. Circuit court of the United States for the district of Nebraska. In chancery. The United States *vs.* The Burlington and Missouri River Railroad Co. in Neb. Subpœna in chancery. Returnable to rule day first Monday in March, 1875. Watson B. Smith, clerk. Returned and filed Feb'y 10, 1875. Watson B. Smith, clerk. James Neville, comp't's sol.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 8th day of February, 1875, I received this subpœna in chancery, and on the 9th day of February, 1875, I served the same upon the within-named The Burlington and Missouri Railroad Co. in Nebraska, in Cass county, State and district of Nebraska, by delivering to and leaving with W. Irving, act'g general superintendant of the said company, a certified copy of this subpœna, with all the endorsements thereon, after making diligent search and being unable to find the president or vice-president or other chief officer of the said company within my district on whom to make said service.

WILLIAM DAILY,
United States Marshal for the Dist. of Neb.,
By ELLIS L. BIERBOWER,
Deputy United States Marshal.

Thereupon, afterwards, to wit, on the first day of March, 1875, an appearance was filed in said case; which said appearance is in words and figures following, to wit:

THE UNITED STATES
vs.
THE BURLINGTON & MO. RIVER R'Y CO. IN NEB.

Please enter my appearance for the defendant in the above-entiled cause.

Dated March 1, '75.

T. M. MARQUETTE,
Solicitor for Def't.
J. M. WOOLWORTH,
Of Counsel.

Upon the back of said appearance appear endorsements in words and figures following, to wit:

No. 113, C. United States *vs.* The Burlington & Mo. River R'y

Co. in Neb. Appearance of def't received and filed March 1, 1875. Watson B. Smith, clerk.

345 Thereupon the appearance of said defendant was entered in the rule book of said court on said first day of March, 1875, as appears of record on folio 32, Rule Rook "A" of said court, to wit:

THE UNITED STATES
vs.
THE BURLINGTON AND MISSOURI RAILROAD CO. IN NEBRASKA.

On this day, J. M. Woolworth, Esq., of counsel, and T. M. Marquette, solicitor, filed and entered their appearance for and on behalf of said defendant.

WATSON B. SMITH, *Clerk.*

Thereupon, afterwards, to wit, on the 5th day of April, 1875, a demurrer was filed in said case; which said demurrer is in words and figures following, to wit:

In the United States Circuit Court, District of Nebraska.

The demurrer of the Burlington and Missouri River Railroad Company in Nebraska to the bill of complaint of the United States of America.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill to be true in such manner and form as the same are therein alleged, demurs thereto, and for cause of demurrer shows that the said plaintiffs have not in and by their said bill made or stated such a case as entitles them to any such relief as is thereby prayed for from or against this defendant. Wherefore this defendant demands the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill or any of the matters & things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

T. M. MARQUETTE,
Sol. for Def't.
J. M. WOOLWORTH,
Of Counsel.

I hereby certify that above demurrer is in my opinion good in point of law.

J. M. WOOLWORTH, *Counselor.*

Upon the back of said demurrer appear indorsements in words and figures following, to wit:

113, C. U. S. cir't c't. U. S. *vs.* B. & M. R. R. Co. in Neb. Demurrer. T. M. Marquette, sol Received and filed April 5, 1875. Watson B. Smith, clerk.

Thereupon, afterwards, at the May term of said court and on the 8th day of May, 1875, the following proceedings were had in said case, as appears of record on folio 233, Journal C, of said court, to wit:

UNITED STATES
vs.
BURLINGTON & MO. RIVER RAILROAD CO. IN NEB.

Ordered that the demurrer of the defendant herein to the bill of complaint of said complainant be, and the same is, set for argument on June 1, 1875.

346 Thereupon, afterwards, at the May adjourned term of said court and on the first day of June, 1875, the following proceedings were had in said case, as appear of record on folio 272, Journal C of said court, to wit:

THE UNITED STATES
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD CO.

This cause this day came on to be heard on the demurrer of said defendant to the bill of complaint of said complainant and was argued to the court by James Neville, U. S. att'y, on behalf of the complainant, and by Mess. J. M. Woolworth & T. M. Marquette on behalf of said defendant.

Whereupon it is considered by the court, the same being fully advised in the premises, that said demurrer is well taken, and the same is sustained.

Whereupon, on motion of counsel for the United States, leave is granted said complainant to amend its bill of complaint in ninety days from this day.

Thereupon, afterwards, at the May adjourned term of said court and on the 26th day of July, 1875, the following proceedings were had in said case, as appears of record on folio 321, Journal C of said court, to wit:

THE UNITED STATES
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEB.

On motion of James Neville, Esq., U. S. attorney, said U. S. attorney has time until the 10th day of October next in which to file a new or amended bill in this cause.

Thereupon, afterwards, to wit, on the 9th day of October, 1875, an amended bill was filed in said case; which said amended bill is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

THE UNITED STATES
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA.

To the judges of the circuit court of the United States for the district of Nebraska:

The United States of America, by James Neville, United States attorney for the district of Nebraska, brings this their bill of complaint against the Burlington & Missouri River Railroad Company in Nebraska, and for cause of complaint says:

I.

1. That under and by virtue of an act of Congress of the United States entitled "An act to aid in the construction of a railroad and
347 telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1st, 1862, the Union Pacific Railroad Company was incorporated with power and authority to lay out, locate, construct, furnish, maintain, and enjoy a continuous line of railroad and telegraph, with the appurtenances, from a point on the one-hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Platte river, in the then Territory of Nebraska, to the western boundary of Nevada Territory upon the route therein provided, and with divers powers, privileges, immunities, franchises, and duties granted to and imposed upon it, as by the said act, reference thereunto being had, will appear; and by the third section of said act it was enacted "That there be, and hereby is, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad, on the line thereof and within the limits of ten miles on each side of said road not sold, reserved, or otherwise disposed of by the United States and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed." By the fourteenth section of said act it was further enacted "That the said Union Pacific Railroad Company is hereby authorized and required to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa, to be fixed by the President of the United States, upon the most direct and practicable route, to be subject to his approval, so as to form a connection with the line of said company at some point on the one-hundreth meridian of longitude aforesaid, from the point of commencement on the western boundary of the State of Iowa, upon the same terms and conditions

in all respects as are contained in this act for the construction of the railroad and telegraph first above mentioned."

II.

2. That by the act of Congress entitled "An act to amend an act entitled an 'Act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862," which last-entitled act was approved July 2, 1864, it was, among other things, by the fourth section of said act enacted "That section three of said act first above entitled be hereby amended by striking out the word 'five' where the same occurs in said section and by inserting in lieu thereof the word 'ten;' striking out the word 'ten' where the same occurs in said section and by inserting in lieu thereof the word 'twenty;'" and by sections eighteen, nineteen, and twenty thereof it was further enacted as follows: "That the Burlington & Missour River Railroad Company, a corporation organized under and by virtue of the laws of the State of Iowa, be, and hereby is, authorized to extend its road through the Territory of Nebraska from a point where it strikes the Missouri river south of the mouth of the Platte river to some point not further west than the one-hundredth meridian of west longitude, so as to connect by the most practicable route with the main trunk of the Union Pacific railroad, or that part of it which runs from Omaha to the
348 said one hundredth meridian of west longitude; and for the purpose of enabling said Burlington & Missouri River Railroad Company to construct that portion of their road herein authorized the right of way through the public lands is hereby granted to said company for the construction of said road, and the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road earth, stone, timber, and other material for the construction thereof. Said right of way is granted the said company to the extent of two hundred feet where it may pass over the public lands, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables, and water stations, and the United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this section and required for the said right of way and grant of land herein made.

"SECTION 19. And be it further enacted, That for the purpose of aiding in the construction of said road there be, and hereby is, granted to the said Burlington & Missouri River Railroad Company every alternate section of public land (excepting mineral land, as approved in this act) designated by odd numbers, to the amount of ten alternate sections per mile on each side of said road, on the line thereof, and not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed: Provided, that said company shall

accept this grant within one year from the passage of this act by filing such acceptance with the Secretary of the Interior, and shall also establish the line of said road and file a map thereof with the Secretary of the Interior within one year from the date of said acceptance, when the said Secretary shall withdraw the lan ds embraced in this grant from market.

"SECTION 20. And be it further enacted, That whenever said Burlington & Missouri River Railroad Company shall have completed twenty consecutive miles of the road mentioned in the foregoing section, in the manner provided for other roads mentioned in this act and the act to which this is an amendment, the President of the United States shall appoint three commissioners to examine and report to him in relation thereto; and if it shall appear to him that twenty miles of said road has been completed as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company on each side of said road as far as the same is completed to the amount aforesaid, and such examination, report, and conveyance by patents shall continue from time to time in like manner until said road shall have been completed. And the President shall appoint said commissioners to fill vacancies in said commission, as provided in relation to other roads mentioned in the act to which this is an amendment, and the said company shall be entitled to all the privileges and immunities granted the Hannibal & St. Joseph Railroad Company by said last-mentioned act so far as the same may be applicable: Provided, that no Government bonds shall be issued to the said Burlington & Missouri River Railroad Company to aid in construction of said extension of its road: And provided further, that said extension shall be completed within the period of ten years from the passage of this act."

4. That the Burlington and Missouri River Railroad Company, in the above-recited sections of said act mentioned, accepted
349 the grant therein contained within thirty days from the approval of the act by Congress making the said land grant to defendants, and established the line of its road and filed a map thereof with the Secretary of the Interior on the 22nd day of June, 1865.

III.

1. That Congress passed a joint resolution, as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of Congress approved July 2nd, 1864, granting certain lands to the Burlington & Missouri River Railroad Company to aid in extending its road through the then Territory of Nebraska to connect with the Union Pacific Railroad Company shall be construed so as to authorize the Burlington & Missouri River Railroad Company to assign and convey to a railroad company to be organized under the laws of the State of Nebraska all the rights, powers, and privileges granted and conferred by said act and subject to all the conditions and requirements therein contained."

Which resolution was approved on the tenth day of April, A. D. 1869.

IV.

1. That the said defendant, The Burlington & Missouri River Railroad Company in Nebraska, was thereupon organized and incorporated under and by virtue of the laws of the State of Nebraska—that is to say, subdivision entitled railroads, of chapter twenty-five of the Revised Statutes of said State—with full power to build the railroad in the aforesaid acts mentioned; and thereupon the said Burlington & Missouri River Railroad Company, for value by it therefor received, assigned and conveyed to the said defendant all the rights, powers, and privileges which were granted or conferred by the above-entitled act of July 2nd, 1864.

V.

2. That the said Union Pacific Railroad Company entered upon the work of constructing its said railroad and telegraph lines, as well *as* those commencing on the one-hundredth meridian of longitude and running thence west as those commencing on the western boundary of the State of Iowa and running west to the said one-hundredth meridian and then connecting with the first above mentioned lines, and completed both thereof on the 4th day of July, 1869, as the complainant is informed.

VI.

1. That on the fourth day of July, A. D. 1869, the said Burlington & Missouri River Railroad Company in Nebraska, under and by virtue of the authority upon it so as aforesaid conferred, commenced the construction of said road at the initial point on the Missouri river, at Plattsmouth, in Cass county, and thereafter prosecuted the same with such vigor that on the 2nd day of September, 1872, it had completed the same through the counties of Cass, Saunders, Lancaster, Saline, Fillmore, Clay, Adams, and Kearney to Fort Kearney, in the last-named county, where it made a junction with the said Union Pacific Railroad Company's road, as in the act secondly above entitled; that as each twenty miles of said road was completed from said Plattsmouth to said Kearney commissioners were appointed by the President of the United States to ex-
350 amine each twenty miles of said road, and said commissioners, at the several times when each twenty miles was completed, did examine and report as required by section twenty of the act granting lands to said company; that as said reports were made lands were granted on each side of the road for the distance of twenty miles of said road when that distance had been completed.

VII.

1. That on the line of the said defendant's railroad and within the limits of twenty miles of said road, as specified by the act of July 2, 1864, portions of the lands had been sold, homesteaded, preempted, and reserved or otherwise disposed of by the United States

at the time of the taking effect of the said grant to the said defendant. Thereupon the said defendant made application to the proper department of the United States for patents of lands being outside of the limits of twenty miles on each side of said road, as contained in the said act of July 2, 1864, in lieu of these lands within the limits of said twenty miles which had been disposed of as aforesaid.

VIII.

2. That thereafter, from the 31st day of May until the 7th day of November, 1872, the Commissioner of the General Land Office made and delivered to the said defendant company several certificates to the effect that it was entitled to such lands and letters patent therefor; and afterwards and at divers times, to wit, June 15th, 1872, June 28th, 1872, September 19th, 1872, and November 12th, 1872, and November 20th, 1872, five several patents were issued to said company, wherein were, among others, conveyed to said defendant lands to the extent of 1,200,000 acres, of the value of five millions of dollars, which were more than twenty miles distant from the line of the said road of said B. & M. R. R. Co. and not within the said twenty-mile limit specified in the said act of July 2nd, 1864, a full description of which said lands being outside of said limit, together with the number of the several counties in which the same are situate, is set forth in the schedules hereto annexed, marked A, B, C, D, E, F, G, and H, and which the complainants pray may be taken as part of this bill.

IX.

That the lands in odd-numbered sections embraced in the grant to the defendants, lying and being within the limit of twenty sections from the line of defendants' road, *was* withdrawn from market by the Secretary of the Interior on the first day of July, 1865, and the lands finally patented to defendants, lying and being distant more than twenty sections from line of defendants' road, were not withdrawn from market until the 31st day of May, 1872.

X.

That at the time of the definite location of the line of defendants' road, to wit, on the 22nd day of June, 1865, and at the time of the completion of the first twenty miles of defendants' railroad west from Plattsmouth there were one hundred and sixty-two odd-numbered sections of land, lying on the south side of said twenty miles of completed road and within the limit of twenty miles distant from
351 said completed road, which had been pre-empted, homesteaded, sold, and otherwise disposed of; that in lieu of said one hundred and sixty-two odd-numbered sections of land so as aforesaid otherwise disposed of the defendants selected and located and procured patents to land in odd-numbered sections to an equal amount in Webster county, Nebraska, distant more than twenty sections from the line of the defendants' railroad as originally fixed and distant more than one hundred and twenty miles west from the

western terminus of the first completed twenty miles of defendants' road, a definite and full description of said lands in Webster county being set forth in a schedule marked "Exhibit A" and made a part of this bill, the said lands in said schedule here referred to being those first named, to the amount of one hundred and sixty-two sections, and the remaining lands in this schedule, to the number of twenty-six sections, being those secondly referred to; that the defendants could have procured patents to the same amount of public lands in odd-numbered sections directly south from the line of said twenty miles of their road at the time of the definite location of the line of their road and at the time of the completion of the first twenty miles thereof; that at the time of the definite location of defendants' road and at the time of the completion of said first twenty miles thereof the defendants could have secured patents to one hundred and sixty-two odd-numbered sections of public lands south of said road distant from said completed twenty miles of road not more than sixty miles and nearer to the general line of defendants' road by twenty miles.

XI.

That at the time of the definite location of the line of defendants' road and at the time of the completion of the second twenty miles of defendants' road west from Plattsmouth there were lands in odd-numbered sections to the amount of forty-eight sections, lying and being within the limit of twenty sections south from the line of said completed second twenty miles of road, which had been pre-empted, homesteaded, sold, or otherwise disposed of by the United States; that in lieu of said lands so last aforesaid disposed of the defendants selected and located and the United States patented to said defendants land in odd-numbered sections to the amount of forty-eight sections, lying and being in Webster and Franklin counties, Nebraska, south of the line of defendants' road and distant from the original line of the said road more than twenty miles or twenty sections and distant west from the west terminus of the said completed second twenty miles of defendants' road more than one hundred miles. A further and full description of said last-named lands is shown in Schedules A and B, which are made a part of this bill, the same being the last-described lands, to the amount of twenty-six sections in said Schedule A, and the first-described lands in Schedule B, to the amount of twenty-two sections in said schedule; that there were other public lands in odd-numbered sections to the amount last aforesaid, lying and being directly south from the line of said completed second twenty miles of defendants' road, not otherwise disposed of by the United States at the time last aforesaid; that there were public lands to the amount last aforesaid in odd-numbered sections not otherwise disposed of by the United States at the time last aforesaid distant from the said last-named twenty miles of road more than sixty miles, but distant from the line of said road more than twenty miles.

352 XII.

That at the time of the defin-e location of the line of defendants' road and at the time of the completion of the third twenty miles of said road west from Plattsmouth there were lands in odd-numbered sections to the amount of twenty-two sections, lying and being within the limit of twenty sections south from the line of said road and within the limit of twenty sections south from the line of said completed third twenty miles of said road, which had been sold, reserved, pre-empted, homesteaded, and otherwise disposed of by the United States; that in lieu of said last-named lands the defendants selected and located and the United States officers patented to defendant an equal amount of land in odd-numbered sections, lying and being in Franklin county, Nebraska, south of the line of defendants' road as first located and distant from the nearest line of said original line of road more than twenty sections and distant west from the west terminus of the said completed third twenty miles of defendants' road more than one hundred miles. A further and full description of said last-named lands *are* shown in a schedule marked "B," hereto attached and made a part of this bill, the same being the lands secondly described in said Schedule B, to the amount of twenty-two sections; that there were other public lands undisposed of by the United States, lying and being in odd-numbered sections directly south of the line of said third completed twenty miles of defendants' road, which defendant could have selected and secured patents for at the time of the definite location of the line of defendants' road and at the time of the completion of the said last-named twenty miles of road, so that defendant could have procured directly south on the south side of said road patents to ten odd-numbered sections opposite each mile of said last-named twenty miles of road.

XIII.

That at the time of the definite location of the line of the defendants' road and at the completion of the fourth twenty miles of said road west from Plattsmouth there were public lands in odd-numbered sections to the amount of twenty sections, lying and being within the limit of twenty sections south from the line of defendants' road and within the limit of twenty sections south from the line of said last-mentioned completed fourth twenty miles of said road, which had been sold, reserved, homesteaded, pre-empted, or otherwise disposed of by the United States; that in lieu of said last-named lands the defendants selected and located and the United States officers patented to the defendants an equal amount of lands in odd-numbered sections, lying and being in Franklin county, Nebraska, south of the line of defendants' road and distant from the nearest original line of the railroad of defendants as first located more than twenty sections and distant west from the west terminus of the said completed fourth twenty miles of defendants' road more than one hundred miles. A further and full description of said last-named lands *are* shown in a schedule marked "B" and made a part of this

bill, the said lands being the first lands, to the amount of twenty sections, described after the first lands, to the amount of forty-two sections, before referred to in said Schedule B; that there were other public lands undisposed of by the United States, lying and being in odd-numbered sections directly south of the line of said fourth completed twenty miles of defendants' road and not distant from said road more than sixty miles, which defendants could
353 have selected and secured patents for at the time of the definite location of defendants' road and at the time of the completion of said last-named twenty miles of road, so that defendant could have procured directly south, opposite each completed mile of road, patents to ten odd-numbered sections opposite each mile of said last-named twenty miles of road when completed.

XIV.

That at the time said last-named twenty miles of said road *was* completed, the defendant- diverged from the original definite location of the line of their road under and by virtue of an act of Congress approved May 6th, 1870, which said act of Congress is in the words following, to wit:

XV.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Burlington & Missouri River Railroad Company or its assigns, in the State of Nebraska, may so far change the location of that portion of its line that lies west of the city of Lincoln, in said State, as shown by the map thereof now on file in the General Land Office of the United States, so as to secure a better and more practical route and to connect with the Union Pacific railroad at or near the Fort Kearney reservation, said new line to be located within the limits of the land grant made by the United States to aid in its construction: Provided, however, that said line shall not be located farther south than the southern boundary line of township number seven, in said State; and said change shall not impair the right to nor change the location of said land grant, and the said company or its assigns shall receive no different or other or greater quantity of land than if this act had not passed and no change had been made in the located line of said road."

XVI.

That at the time of the definite location of the line of defendants' road and at the time of the completion of the west twenty miles of said road there were one hundred and twenty-one odd-numbered sections of public land which had been reserved and otherwise disposed of by the United States, lying and being within the limits of twenty sections south from the line of said last-named twenty miles of road and within the limits of twenty sections south of the original line of defendants' road as first definitely located by defendant; that in lieu of said last-named sections of land the defendant selected and

located and the United States officers patented to defendant an equal amount of land, lying and being in odd-numbered sections in Franklin county, Nebraska, south of the line of said road as originally definitely located and south of the last-named completed twenty miles of road as changed and distant from the nearest line of defendants' road and the original line thereof as first definitely fixed more than twenty sections. A further and full description of said last-named lands *are* set forth in Schedule "B," which is made a part of this bill, the said lands being the last lands to the amount of one hundred and twenty-one sections described in said Schedule B.

354 XVII.

That at the time of the definite location of the line of defendant's road and at the time of the completion of the second twenty miles of said road east from Kearney Junction there were public lands to the amount of one hundred and twenty-four sections in odd-numbered sections, which had been otherwise disposed of by the United States, lying and being within the limit of twenty sections south from the original line of defendant's road, as first definitely fixed, and within the limit of twenty sections south from the second twenty miles east from Kearney Junction of the original line of said road as first definitely fixed.

XVIII.

That in lieu of said last-named lands the defendant selected and located and the United States officers patented to defendant an equal amount of land in odd-numbered sections, lying and being in Valley county, Nebraska, north of the line of said road as originally and definitely fixed and distant from the original line of defendant's road, as first definitely fixed, more than sixty miles; a further and full description of which last-named lands is shown in Schedule H, which is made a part of this bill, the said lands being the one hundred and twenty-four sections first described in said Schedule H as in Valley county, Nebraska.

XIX.

That there were other public lands undisposed of by the United States to the amount of one hundred and twenty-four sections, lying and being in odd-numbered sections directly south of the line of the second twenty miles of the original and definitely located line of said road and not distant therefrom more than thirty-two miles, which defendant could have selected and received patents for at the time of the definite location of the line of said road and at the time of the completion of the second twenty miles of said road from Kearney Junction, so that defendants could have procured directly south, opposite each mile of the said last-named twenty miles of original line of road, patents to ten odd-numbered sections per mile of line of road.

XX.

That at the time of the definite location of the line of said road and at the time of the completion of the third twenty miles of said road east from Kearney Junction there were public lands to the amount of seventy-nine sections in odd-numbered sections which had been otherwise disposed of by the United States, lying and being within the limit of twenty sections south from the original line of defendant's road as first definitely fixed and within the limit of twenty sections south from the third twenty miles east from Kearney Junction of the original line of said road as first definitely fixed; that in lieu of said last-named lands the defendant selected and located and the United States officers patented to defendant an equal amount of lands in odd-numbered sections, lying and being in Valley county, Nebraska, north of the line of said road as originally and definitely fixed, distant from said original line of defendant's road, as first definitely fixed, more than sixty sections and distant west from the west terminus of said last-named twenty miles of original line of said road more than twenty miles; a further and full description of which last-named lands is shown in Schedule
355 H, which is made a part of this bill, the said lands being all those lands described in Schedule H next after the one hundred and twenty-four sections first described in said Schedule H as in Valley county, Nebraska.

XXI.

That there were other public lands undisposed of by the United States at the time of the definite location of the line of said road and at the time of the completion of the third twenty miles of said road east from Kearney Junction to the amount of seventy-nine sections in odd-numbered sections directly south of the line of the third twenty miles of the original and definitely located line of said road and not distant therefrom more than twenty miles, which defendant could have selected and received patents for, so that defendant could have procured directly south, opposite each mile of the said last-named twenty miles of the original line of road, patents to ten odd-numbered sections per mile of line of road.

XXII.

That at the time of the definite location of the line of said road and at the time of the completion of the first twenty miles of defendant's road west from Plattsmouth there were one hundred and fifty odd-numbered sections of land lying and being on the north side of said twenty miles of completed road, within the limit of twenty miles distant from said last completed road, which had been pre-empted, homesteaded, sold, and otherwise disposed of.

XXIII.

That in lieu of said one hundred and fifty odd-numbered sections of land, so as aforesaid otherwise disposed of, the defendants se-

XXVIII.

That at the time of the definite location of the line of defendant's road and at the time of the completion of the first twenty miles of said road east from Kearney Junction, the west terminus of said road, there were lands to the amount of one hundred and fifty-six sections in odd-numbered sections on the north side of the said last-named twenty miles of road and within the limits of twenty miles north from the first twenty miles east from said Kearney Junction of the original line of defendant's road as first definitely fixed which had been otherwise disposed of by the United States; that in lieu of said last-named lands defendant selected and located and the United States officers patented to said defendants lands in odd-numbered sections to an equal amount in Sherman county, Nebraska, distant from the line of said road, as originally fixed, more than twenty miles. A full description of said last-named lands is shown by schedule marked "Exhibit F," which is made a part of this bill, the said lands in said schedule here referred to being the ninety-nine thousand eight hundred and forty acres first described in said Schedule F as in Sherman county, Nebraska.

XXIX.

That at the time of the definite location of the line of said road and at the time of the completion of the second twenty miles of said road east from said Kearney Junction there were lands to the amount of two hundred and thirteen sections in odd-numbered sections on the north side of the second twenty miles east from Kearney Junction of the original line of said road as first fixed within the limit of twenty miles north from said last-named twenty miles of the line of road which had been otherwise disposed of by the United States; that in lieu of said last-named lands defendant selected and the United States officers patented to said defendants lands north of said last-named twenty miles of road in odd-numbered sections to an equal amount in Sherman, Howard, and Greeley counties, Nebraska, distant from the original line of said road as first located more than twenty miles. A full description of said last-named lands is shown in schedules marked Exhibits F and G and made a part of this bill, the said lands in said schedule here referred to being the thirty-two thousand and thirteen acres last described in Schedule F as in Sherman county, Nebraska, all the lands described in Schedule G as in Howard county, Nebraska, and the twelve thousand nine hundred and thirty-two acres first described in Schedule G as in Greeley county, Nebraska.

XXX.

That at the time of the definite location of the line of said road and at the time of the completion of the third twenty miles of said road east from said Kearney Junction there were lands to the amount of two hundred and nine sections in odd-numbered sections on the north side of the third twenty miles east from Kearney Junction of the original line of said road as first fixed, within the limit of twenty miles of the line of said road, which had been otherwise disposed of by the United States; that in lieu of said last-named lands defendant selected and located and the United States officers patented to said defendant lands in odd-numbered sections to an equal amount in Greeley county, Nebraska, distant from the original line of said road as first located more than twenty sections. A full description of said last-named lands is shown in schedule marked "Exhibit G" and made a part of this bill, the said lands in said schedule here referred to being the one hundred and thirty-three thousand seven hundred and sixty acres described in said last-named schedule next after the description of twelve thousand nine hundred and thirty-two acres as in Greeley county, Nebraska.

XXXI.

That at the time of the definite location of the line of said road and at the time of the completion of the fourth twenty miles of said road east from said Kearney Junction there were lands to the amount of one hundred and seventy-nine sections in odd-numbered sections on the north side of the fourth twenty miles east from Kearney Junction of the original line of said road as first located, within the limit of twenty miles of the line of said road, which had been otherwise disposed of by the United States; that in lieu of said last-named lands defendant selected and located and the United States officers patented to said defendant lands in odd-numbered sections to an equal amount in Boone county, Nebraska, distant from the original line of said road as first located more than twenty sections. A full description of said last-named lands is shown in schedule marked "Exhibit E" and made a part of this bill, the said lands in said schedule here referred to being the one hundred and fourteen thousand five hundred and sixty acres first described after the first fifty-one thousand eight hundred and ten acres described in Schedule E as in Boone county, Nebraska.

XXXII.

That at the time of the definite location of said road and at the time of the completion of the fifth twenty miles of said road east from

lected and located and procured patents from the United States to public lands in odd-numbered sections north of said road to an equal amount in Dakota, Dixon, Cedar, Wayne, Pierce, Stanton, and Madison counties, Nebraska, distant from the line of defendant's road more than one hundred miles and distant west from the west end of said last-named twenty miles of road from twenty to one hundred miles. A more definite and full description of said last-named lands is shown by schedule marked "Exhibit C" and made a part of this bill, the said lands in said schedule here referred to being all those in Dakota, Dixon, Cedar, Wayne, Pierce, and Stanton and the lands to the amount of twenty-eight thousand and ten acres first described in said Schedule "C" as in Madison county, Nebraska.

XXIV.

That there were other public lands to the amount of one hundred and fifty sections in odd-numbered sections lying and being directly north of the line of said last-named twenty miles of road, so that defendant could have secured patents to ten odd-numbered sections opposite to and directly north of each mile of said last-named twenty miles of road at the time of the definite location of the line of said road and at the time of the completion of the said first twenty miles thereof.

XXV.

That at the time of the definite location of the line of said road and at the time of the completion of said twenty miles thereof
356 there were other public lands in odd-numbered sections to the amount of one hundred and fifty sections lying near to the line of said road and nearer to said first completed twenty miles of said road by twenty-five miles than the said one hundred and fifty sections patented to said road as last aforesaid.

XXVI.

That at the time of the definite location of the line of defendant's road and at the time of the completion of the second twenty miles of said road west from Plattsmouth there were lands to the amount of one hundred and seventy sections in odd-numbered sections on the north side of the last-named twenty miles of road and within the limit of twenty sections north from said last-named completed twenty miles of road which had been pre-empted, homesteaded, or otherwise disposed of by the United States; that in lieu of said last-named lands defendants selected and located and the United States officers patented to said defendant lands in odd-numbered sections to an equal amount in Madison, Platte, and Antelope counties, Nebraska, distant from the line of defendant's road more than ninety miles and distant west from the west end of said last-named twenty miles of road more than sixty miles. A more definite and full description of said last-named lands is shown by schedules marked Exhibits C and D, which are made a part of this bill, the said lands

in said schedules here referred to being the last fifty-nine thousand nine hundred and sixty-nine acres described in said Schedule C as in Madison county, Nebraska, all the land described in Schedule D as in Platte county, Nebraska, and the first twenty thousand five hundred and sixty-two acres described in Schedule D as in Antelope county, Nebraska; that there were other public lands to the amount of one hundred and seventy sections in odd-numbered sections lying and being directly north of the line of said last-named twenty miles of road, so that defendants could have procured patents from the United States to ten odd-numbered sections opposite to and directly north of each mile of said last-named twenty miles of road at the time of the definite location of the line of said road and at the time of the completion of said last-named second twenty miles of said road; that at the time of the definite location of the line of said road and at the time of the completion of the said second twenty miles of road west from Plattsmouth there were other public lands in odd-numbered sections to the amount of seventy sections lying nearer to the said second completed twenty miles of road by twenty miles than the same amount of lands taken, as shown in Schedules C and D.

XXVII.

That at the time of the definite location of the line of defendant's road and at the time of the completion of the third twenty miles of said road west from Plattsmouth there were lands to the amount of one hundred and forty sections in odd-numbered sections on the north side of the said last-named twenty miles of road and within the limit of twenty sections north from said last-named completed twenty miles of road which had been pre-empted, homesteaded, and otherwise disposed of by the United States; that in lieu of said last-named lands defendant selected and located and the United States officers patented to said defendant lands in odd-numbered sections to an equal amount in Antelope and Boone counties, Nebraska, distant from the line of defendant's road more than one hundred miles
and distant west from the west end of said last-named twenty
357 miles of road more than seventy miles. A full description of said last-named lands is shown by schedules marked D and E, which are made a part of this bill, the said lands in said schedules here referred to being the thirty-seven thousand seven hundred and ninety acres last described in said Schedule D as in Antelope county, Nebraska, and the fifty-one thousand eight hundred and ten acres first described in Schedule E as in Boone county, Nebraska; that there were other public lands to the amount of one hundred and forty sections in odd-numbered sections lying and being directly north of the line of said last-named twenty miles of road, so that the defendant could have procured from the United States patents to ten odd-numbered sections opposite to and directly north of each mile of said last-named twenty miles of road at the time of the definite location of the line of said road and at the time of the completion of the said third twenty miles of said road.

said Kearney Junction there were lands to the amount of fourteen thousand seven hundred and twenty acres in odd-numbered sections on the north side of the fifth twenty miles east from said Kearney Junction of the original line of said road as first located, within the limit of twenty sections north from said last-named twenty miles of the line of road, which had been disposed of by the United States; that in lieu of said last-named lands defendant selected and located and the United States officers patented to defendant lands in odd-numbered sections to an equal amount in Boone county, Nebraska, distant from the original line of said road as first located more than twenty sections. A full description of said last-named lands is shown in schedule marked "Exhibit E" and made a part of this bill, the said lands in said schedule
359 here referred to being the fourteen thousand seven hundred and twenty acres last described in Schedule E as in Boone county, Nebraska.

XXXIII.

That the act of Congress approved July 2nd, 1864, making the land grant to the Burlington and Missouri River Railroad Company in Nebraska, also gave an additional land grant to the Union Pacific Railroad Company, so that the lands granted to the Union Pacific Railroad Company are the same lands that are granted to the Burlington & Missouri River Railroad Company, to the amount of three hundred and seventy-five thousand six hundred and sixty acres—that is to say, that the same lands in odd-numbered sections to the amount last aforesaid are within the limit of twenty sections from the Burlington & Missouri River railroad in Nebraska, or the original line thereof as first located, and also between the ten and twenty mile limit of the Union Pacific Railroad Company's grant; a full description of said last-named lands is set forth in schedule marked "Exhibit K" and made a part of this bill; that the defendant was entitled to patents to all or at least one-half of the lands granted as last aforesaid and is not entitled in lieu thereof to other lands outside of their twenty-section limit; that of the lands last described and referred to as being within the grant to the defendant and the Union Pacific Railroad Co. one hundred and sixty-six thousand four hundred acres have been patented to the said Union Pacific Railroad Company, and the remainder is not patented; that the grant of 1864, amending the grant of 1862, did not give the Union Pacific Company any additional lands opposite to the line of its road from the point on the one hundredth meridian east of the Missouri river; that the Union Pacific Company is not, therefore, entitled to lands beyond the ten miles limit from the line of its road known as the Iowa Branch; therefore the defendant is entitled to one thousand and twenty odd sections of land, being all the odd-numbered sections lying between the ten & twenty miles limits of the Union Pacific Company's road from said one hundredth meridian east, provided defendant is entitled to take lands beyond a limit of

twenty miles from its road; yet the Union Pacific Company procured the land department to patent to it all of the odd-numbered sections between a line of ten miles from its road and a line twenty miles from its road, both on the north and on the south of said road, between the one hundredth meridian and the Missouri river, save and except two hundred and nine thousand two hundred and sixty acres, as hereinbefore stated and referred to as not patented. In consequence whereof the defendant obtained lands conveyed in the patents to it heretofore mentioned to the extent of the lands so improperly obtained by said Union Pacific Company.

XXXIV

That the Union Pacific railroad and the Burlington & Missouri River railroad in Nebraska lie nearly parallel west from the Missouri river to the extent of two hundred miles, the defendant's road being south of the Union Pacific; that all the lands the defendant received patents for north of their line of road in lieu of those otherwise disposed of and those claimed by the Union Pacific Railroad Company are north of the north twenty miles limit of the Union Pacific Railroad Company's land grant.

360 XXXV.

That the defendant, if entitled to take lands out of the twenty-section limit north from their road, should first have taken one-half of all the odd-numbered sections between the ten and twenty mile limit of the Union Pacific Company's land grant north of their road.

XXXVI.

That said last-named lands lying between the north ten and twenty miles limit of said Union Pacific Company's grant are from five to ten miles nearer the line of the defendant's road than any of the lands patented to the defendant on the north side of their road out of their twenty-section limit. A full description of said lands between the north ten and twenty mile limit of the Union Pacific grant is set forth in schedule marked "Exhibit L" and made a part of this bill.

XXXVII.

That at the time of the completion of the second, third, fourth, and fifth twenty miles of defendants' road east from said Kearney Junction there were one hundred and fifty thousand acres of land on the south side of the second, third, fourth, and fifth twenty miles east from said Kearney Junction of the original line of said road as first located which had been otherwise disposed of and claimed by the Union Pacific Company.

XXXVIII.

That in lieu of said last-named lands the defendant selected and the United States officers patented to the defendants an equal amount of lands on the north side of the said last-named line of road when the same should have been taken on the south side.

XXXIX.

That the Secretary of the Interior, at the time of the definite location of defendant's road and until the 31st of May, 1872, withheld the lands lying outside of the twenty-section limit of the grant to the Burlington and Missouri River Railroad Company from said company, and ruled that all such lands were not within the grant to said B. and M. Company, and the said Secretary did not withdraw such lands from the market, but continued to patent such lands to other parties whose claims attached after the definite location of line of defendant's road and up to the 31st of May, 1872.

XL.

That for the purpose of showing more definitely the location of the road of defendant and that of the Union Pacific Company, together with the conflict of lands granted, and for the purpose of showing the distance from the defendant's original line of road of each section and parts of sections and the distance west from each twenty miles of defendant's road as completed the lands were patented to defendant outside of the twenty miles limit from defendant's road. A section and a quarter-section map, with notes explaining the same, certified to by the Secretary of the Interior as correct in all respects, is hereto attached, marked "Exhibit N," and made a part of this bill.

361

XLI.

That for the purpose of convenience in making reference to the lands outside of defendant's twenty miles limit shown in schedule a section map, showing the county lines, is hereto attached, marked "Exhibit O," and made a part of this bill.

XLII.

1st. And thereupon the said complainants charge and insist that the said lands, to wit, the one million two hundred thousand acres, and specified in Schedules A, B, C, D, E, F, G, and H, and all other lands so as aforesaid patented to said defendants, being distant more than twenty miles or twenty sections from the line of defendant's said road as originally fixed, are not within the grant to said defendant; that the said patents conveying the said lands outside of said twenty miles limit from defendant's said road were, to the extent to

which they purported to convey the same to said defendants, utterly without warrant or authority of law, are null and void, and improvidently issued.

XLIII.

2nd. Complain-t further charges and insists that the patents to all lands north of the original line of defendant's road which were taken outside of the twenty sections limit of defendant's grant and in lieu of lands lying south of the original line of defendant's road within the twenty-section limit which had been otherwise disposed of are without authority of law and therefore null and void.

XLIV.

3rd. Complain-t further charges that the defendant should have taken the lands lying nearest to original line of defendant's road, which were embraced within the said land grant to defendants.

XLV.

4. That defendant was, under said grant to defendants, entitled to patents to all or at least one-half of the lands in odd-numbered sections lying and being both within the twenty-section limit of the defendant's land grant and between the ten and twenty miles limit of the grant to the Union Pacific Company, and that patents to lands given in lieu of such lands are null and void.

XLVI.

5. That if the defendant is entitled to lands beyond the distance of twenty sections from the original line of their road they must take the nearest and should therefore have received patents to all or at least one-half of the lands in odd-numbered sections lying and being between the north ten and twenty mile limit of the Union Pacific land grant north of their road, and that patents to lands further distant from defendant's line of road than the odd-numbered sections contained in the last-named limit of the Union Pacific grant are, to the extent of all or at least one-half of the odd-numbered sections within said last-named limit, utterly without authority of law and null and void.

362 XLVII.

1. The said complainant well hoped that the said defendant would desist from claiming any right, title, or interest in said lands, as if duly granted to it, but the said defendant claims and insists that it is entitled to the full and complete ownership of said lands; all of which doings, actings, and refusals are contrary to equity, good conscience, and tend to the manifest wrong and injury of the said complainant.

XLVIII.

1. In tender consideration whereof and forasmuch as said complainant is remediless in the premises at and by the strict rules of common law and can only have adequate relief in a court of equity, where matters of this and like nature are properly cognizable and relievable, and to the end thereof that the said defendant may, if it can, show why said complainant should not have the relief herein prayed, complainant asks an order that defendant may answer this bill of the said complainant, and that it be by the decree of your honor declared that the grant to said defendant made in the nineteenth section of this act secondly in this bill entitled did not extend to or include or convey the lands or any part thereof described in the annexed schedules, A, B, C, D, E, F, and G, as distant from the line of defendant's road more than twenty sections, or other lands without the limit specified in the last-named act, or the issue to it of patents conveying the same, and that the said patents so as aforesaid issued to said company, to the extent to which the same purport to convey said lands or any thereof, are and each and every thereof is utterly null and void

2. That if the court should find that defendant is entitled to lands beyond the limit of twenty miles from the original line of defendant's road that it be decreed by the court that the patents to lands to defendants on the north side of their line of road to the amount of one hundred and fifty thousand acres, patented in lieu of the same amount of lands on the south side of said line of road which had been otherwise disposed of, are utterly null and void; that if the court shall find that the one hundred and fifty thousand acres taken on the north side of defendant's road in excess of the amount granted on the north side cannot be described by congressional subdivision as having been taken in lieu of lands deficient on the south side of said road, then that the court order and decree that the defendant deed and convey back to complainant an equal amount of lands in such manner as the court shall direct; or if defendant shall not be possessed of lands sufficient, then that defendant be ordered and decreed to pay back in money to plaintiff the value or proceeds of one hundred and fifty thousand acres so wrongfully held.

3. That the defendants are entitled to patents to all, or at least one-half, of the lands in odd-numbered sections lying and being both within the limit of the land grant of defendant and also within the ten and twenty miles limit of the Union Pacific grant, and not entitled to other lands more remote in lieu thereof.

That the defendant, if entitled to lands at a greater distance than twenty sections from original line of its road, should take the nearest lands to said line of road, and therefore should have received patents to all, or at least one-half, of the lands in odd-numbered sections lying and being between the north ten and twenty miles limit of the Union Pacific grant, said last-named lands lying nearer
363 to line of defendants' road by ten miles than any of the lands

patented to defendants on north side of their road out of the twenty-section limit, and that the defendant, if entitled to lands beyond the distance of twenty sections from its road in lieu of lands otherwise disposed of, should only take lands directly opposite north or south from said odd-numbered sections so as aforesaid otherwise disposed of; that the defendant is not entitled to take lands opposite one division of twenty miles of completed road in lieu of other lands otherwise disposed of opposite another division of twenty miles of completed road, and that the complainant may have the costs of this suit and all other and further relief that may appear equitable and necessary.

XLIX.

1. May it please your honor to grant unto said complainant the writ of subpœna, issuing in proper manner and directed to the said defendant, commanding it that at a day therein to be inserted it be and appear by its proper officers before your honors in this honorable court, then and there to answer the premises and stand to, perform, and abide such order and decree in the premises as to your honors shall seem to be agreeable to equity and good conscience.

JAMES NEVILLE,
U. S. Attorney, Dist. Nebraska.

EXHIBIT A.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Webster County, Nebraska.

Part of section.	S.	T.	R.	Acres.
S. E. ¼ of S. E. ¼	15	1	9	40
All of	21	"	"	640
All of	23	"	"	640
N. W. ¼	25	"	"	160
N. W. ¼, W. ½ of S. W. ¼, & E. ½ of S. E. ¼	29	"	"	320
All of	31	"	"	642.80
S. E ¼ of N. E. ¼, S. ½ of S. W. ¼, E. ½ of S. E. ¼, & S. W. ¼ of S. E. ¼	33	"	"	240
N. ½ of	1	2	9	320
All of	3	"	"	640
All of	5	"	"	641.76
Bro't forward				9,017.68
All of	25	2	9	640
All of	29	"	"	640
N W. ¼ & E. ½ of S. W. ¼	33	"	"	240
N. ½ of	35	"	"	320
All of	7	3	9	640.80
S. ½ of	9	"	"	320
S. E ¼ and W. ½	15	"	"	480
All of	17	"	"	640
All of	19	"	"	643.76
All of	21	"	"	640
S. E. ¼ and W. ½	23	"	"	480
S. E. ¼ and W. ½	25	"	"	480
All of	27	"	"	640
All of	29	"	"	640
All of	31	3	9	641.72
All of	33	"	"	640
N. E. ¼ & W. ½	35	"	"	480
N. E. ¼ of N. W. ¼ & S. ½ E. ½ of N. W. ¼, E ½ of S. W. ¼, & E. ½	13	1	10	360
N. W. ¼, W. ½ of N. E. ¼, & W. ½ of S. W. ¼	15	"	"	480
All of	17	"	"	320
W. ½ of N. W. ¼, E. ½ of N. E ¼, and E ½ of S. E ¼	19	"	"	642.20
	23	"	"	240
Forward				20,267.16

364 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Part of section.	S.	T.	R.	Acres.
Bro't forward				20,267.16
N. W. ¼, W. ½ of N. E. ¼, E. ½ of S. E. ¼, & W. ½ of S. W. ¼	27	1	10	400
All of	31	"	"	642.32
All of	33	"	"	640
All of	35	"	"	640
All of	1	2	10	643
N. W. ¼ & E. ½	3	"	"	482.80
All of	5	"	"	640.20
All of	7	"	"	647.60
All of	11	"	"	640
E. ½ of	13	"	"	320
All of	17	"	"	640
W. ½ of	19	"	"	329.44
Bro't forward				32,141.76
All of	13	3	10	640
All of	15	"	"	640
E. ½ of N. E. ¼, N. W. ¼ of N. E. ¼, N. ½ of N. W. ¼, S. W. ¼ of N. W. ¼, and W. ½ of S. W. ¼	17	"	"	320
S. W. ¼ of N. E. ¼, W. ½ of N. W. ¼, S. E. ¼ of N. W. ¼, and S. W. ¼	19	"	"	329.28
E. ½	21	"	"	320
All of	23	"	"	640
All of	25	"	"	640
E. ½ of N. W. ¼, N. W. ¼ of N. W. ¼, E. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, and E. ½ of	27	"	"	560
Bro't forward				42,081.40
W. ½ of S. E. ¼, S. E. ¼ of S. E. ¼, and S. W. ¼	7	1	11	280.50
S. ½ of N. E. ¼ & S. E. ¼	15	"	"	240
W. ½ of	17	"	"	320
All of	19	"	"	642.40
N. W. ¼, W. ½ of S. W. ¼, & E. ½ of S. E. ¼	21	"	"	320
W. ½ of	23	"	"	320
E ½ of	25	"	"	320
N. E. ¼, W. ½ of S. W. ¼, & E. ½ of S. E. ¼	27	"	"	320
N. W. ¼ & W. ½ of S. W. ¼	29	"	"	240
All of	31	"	"	640
All of	33	"	"	640
Bro't forward				52,308.86
E. ½ of	21	2	11	320
S. W. ¼	23	"	"	160
S. W. ¼, W. ½ of S. E. ¼, & N. ½	25	"	"	560
All of	27	"	"	640
All of	29	"	"	640
S. E. ¼ & N. ½	31	"	"	488.18
All of	1	3	11	636.80
All of	3	"	"	631
All of	5	"	"	633.80
All of	7	"	"	633.60
All of	9	"	"	640
All of	11	"	"	640
W. ½ of N E. ¼, S. E. ¼ & W. ½	13	"	"	560
N. W. ¼	23	2	10	170
E. ½ of	25	"	"	320
E. ½ of	27	"	"	320
N. E. ¼ & N. ½ of S. E. ¼	31	"	"	240
S. E. ¼ & N. ½	35	"	"	480
All of	1	3	10	640
All of	3	"	"	640.24
All of	5	"	"	641.60
E ½ of S. E. ¼, W. ½ of S. W. ¼, and N. ½	7	"	"	487.40
All of	9	"	"	640
All of	11	"	"	640
Forward				32,141.76
All of	29	3	10	640
All of	31	"	"	649.32
W. ½ of N. W. ¼, S. E. ¼ of N. W. ¼, and S. W. ¼	33	"	"	280
All of	35	"	"	640
All of	19	4	10	642
S. W. ¼	21	"	"	160
S. E. ¼ & W. ½	27	"	"	480
All of	29	"	"	640
All of	31	"	"	639.04
All of	33	"	"	640
All of	35	"	"	640
Forward				42,081.40
All of	35	1	11	640
All of	1	2	11	642.40
All of	3	"	"	647.44
All of	5	"	"	644
All of	7	"	"	641.92
All of	9	"	"	640
S. E. ¼ & W. ½	11	"	"	480
All of	13	"	"	640
E. ½ of N. E. ¼ & W. ½ of N. W. ¼	15	"	"	160
N. E ¼	17	"	"	160
All of	19	"	"	648.80
Forward				52,308.86
All of	15	3	11	640
All of	17	"	"	640
All of	19	"	"	638.40
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	640
All of	33	"	"	640
All of	35	"	"	640
S. ½ of	5	4	11	320
Forward				66,300.64

365 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				66,300.64
E. ½ of	7	4	11	320
All of	9	"	"	640
S. ½ of	13	"	"	320
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	637.72
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	636.80
All of	33	"	"	640
All of	35	4	11	640
N. ½ of N.W. ¼	5	1	12	77.32
S. ½ of	9	"	"	320
All of	13	"	"	640
S.W. ¼ & E. ½	15	"	"	480
N.W. ¼, N. ½ of S.W. ¼	17	"	"	240
All of	19	"	"	645.60
E. ½ of N.W. ¼ & E. ½ of	21	"	"	400
N. E. ¼ & W. ½	23	"	"	480
All of	25	"	"	640
All of	27	"	"	640
N.W. ¼	29	"	"	160
Forward				79,338.08

Parts of section.	S.	T.	R.	Acres.
Brought forward				79,338.08
All of	31	1	12	642.48
E. ½ of	33	"	"	320
S. ½ of N. E. ¼, S. E. ¼ & W. ½	35	"	"	560
All of	1	2	12	639.84
All of	3	"	"	639.40
All of	5	"	"	639.05
All of	7	"	"	633.88
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
N. ½ of N.W. ¼ & S.W. ¼ of S.W. ¼	17	"	"	120
All of	19	"	"	631.60
All of	21	2	12	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
E. ½ of	29	"	"	320
N. ½ of S. W. ¼ & S.W. ¼ of S.W. ¼	29	"	"	120
S.W. ¼ & N. ½	31	"	"	468.88
N.W. ¼	33	"	"	160
N. ½ of S. E. ¼, N. ½ of S.W. ¼, & N. ½	35	"	"	480
All of	1	3	12	639.80
All of	3	"	"	637 60
Forward				92,110.61

Parts of section.	S.	T.	R.	Acres.
Bro't forward				92,110.61
All of	5	3	12	635.60
All of	7	"	"	612.80
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	615.80
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
S. W. ¼ & E. ½	31	"	"	468.20
All of	33	3	12	640
All of	35	"	"	640
W. ½ of N. E. ¼, W. ½ of S. E. ¼, & W. ½	1	4	12	483.27
All of	3	"	"	653.36
All of	5	"	"	659.20
All of	7	"	"	614.60
All of	9	"	"	640
N. ½ of	11	"	"	320
S. ½ of S. W. ¼, E. ½ of S.E. ¼, & S.W. ¼ of S. E. ¼	13	"	"	200
N.W. ¼	15	"	"	160
Forward				105,853.44

Parts of section.	S.	T.	R.	Acres.
Brought forward				105,853.44
N. ½ of	17	4	12	320
S.W. ¼, S. ½ of N.W. ¼, & E. ½	19	"	"	541.77
S. E. ¼ & E. ½ of S.W. ¼	21	"	"	240
N. E. ¼ & S. ½	23	"	"	480
All of	25	"	"	640
All of	27	"	"	640
All of	29	4	12	640
All of	31	"	"	612.52
All of	33	"	"	640
All of	35	"	"	640
Total acres in Webster Co.				111,247.73

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Franklin County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
N. E. ¼	1	1	13	159.40
S. ½	5	"	"	320
All of	7	"	"	644
E. ½ of	9	"	"	320
All of	13	"	"	640
W. ½ of N. E. ¼, W. ½ of S. E. ¼, & W. ½	15	"	"	480
N. E. ¼, S. ½ of N. W. ¼, & S. ½	17	"	"	560
N. ½ & S. W. ¼	19	"	"	481.60
W. ½	21	"	"	320
E. ½ of N. W. ¼, S. W. ¼, & E. ½	23	"	"	560
All of	25	"	"	640
Brought forward				10,647.60
All of	11	2	13	640
All of	13	"	"	640
W. ½ of S. W. ¼	15	"	"	80
All of	17	"	"	640
All of	19	"	"	643
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
W. ½	27	"	"	320
All of	29	"	"	640
W. ½ of	31	"	"	319.44
N. W. ¼ & E. ½	33	"	"	444.93
N. ½ of N. E. ¼ & E. ½ of N. W. ¼	35	"	"	160
All of	1	3	13	640.44
Brought forward				25,901.25
All of	29	3	13	640
All of	31	"	"	647.72
All of	33	"	"	640
All of	35	"	"	640
All of	1	4	13	663.64
All of	3	"	"	669.46
All of	5	"	"	674.18
All of	7	"	"	633.32
All of	9	"	"	640.00
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
Brought forward				41,824.53
All of	13	1	14	640
All of	15	"	"	640
All of	17	"	"	640
S. W. ¼ & E. ½	19	"	"	481.31
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	641.80
All of	33	"	"	640
All of	35	"	"	640
All of	1	2	14	636.80
All of	3	"	"	638

Parts of section.	S.	T.	R.	Acres.
N. E. ¼, W. ½ of S. E. ¼, & W. ½	27	1	13	560
All of	29	"	"	640
All of	31	"	"	640
All of	33	"	"	640
All of	35	"	"	640
All of	1	2	13	638.40
N. W. ¼ & E. ½	3	"	"	476.52
S. ½	5	"	"	320
All of	7	"	"	647.68
S. ½	9	"	"	320
Forward				10,647.60
All of	3	3	13	639.68
All of	5	"	"	640.32
All of	7	"	"	638.56
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	647.28
S. E. ¼ & W. ½	21	"	"	480
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
Forward				25,901.25
All of	19	4	13	643.00
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	652.16
All of	33	"	"	640
All of	35	"	"	640
N. E. ¼ & W. ½	7	1	14	479.76
All of	9	"	"	640
All of	11	"	"	640
Forward				41,824.53
All of	5	2	14	635.24
All of	7	"	"	637.52
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
E. ½ of N. W. ¼, E. ½ of S. W. ¼, & W. ½ of N. E. ¼	19	"	"	240
N. E. ¼ & W. ½	21	"	"	486
E. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, N. W. ¼ & E. ½	23	"	"	600
Forward				56,415.20

367 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward...	.....	.....	.....	56,415.20
N. E. ¼ & W. ½	25	2	14	480
N. W. ¼, S. ½ of S. W. ¼, & E. ½	27	"	"	560
E. ½ of N. E. ¼, N. W. ¼ of N. E. ¼, & S. W. ¼ of S. E. ¼	29	"	"	160
N. E. ¼, S. W. ¼ of N. W. ¼, N. E. ¼ of S. E. ¼, & N. W. ¼ of S. W. ¼...	33	"	"	280
N. W. ¼	35	"	"	160
All of.....	1	3	14	636
All of.....	3	"	"	644
All of.....	5	"	"	643.28
All of.....	7	"	"	622.80
All of.....	9	"	"	640
All of.....	11	3	14	640
All of.....	13	"	"	640
All of.....	15	"	"	640
All of.....	17	"	"	640
All of.....	19	"	"	630.80
All of.....	21	"	"	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	640
All of.....	29	"	"	640
All of.....	31	"	"	638.92
All of.....	33	"	"	640
All of.....	35	"	"	640
Forward.....	.....	.....	.....	69,551.00
Brought forward...	.....	.....	.....	69,551.00
All of.....	1	4	14	670.12
All of.....	3	"	"	658.28
All of.....	5	"	"	640.56
All of.....	7	"	"	608.20
All of.....	9	"	"	640
All of.....	11	"	"	640
All of.....	13	"	"	640
All of.....	15	"	"	640
All of.....	17	"	"	640
All of.....	19	"	"	612.40
All of.....	21	"	"	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	4	14	640
All of.....	29	"	"	640
All of.....	31	"	"	617.20
All of.....	33	"	"	640
All of.....	35	"	"	640
E. ½ of S. E. ¼, S. W. ¼ of S. E. ¼ & lot No. 1...	9	1	15	161.20
W. ½ of S. W. ¼ & S. E. ¼...	11	"	"	240
All of.....	13	"	"	640
S. E. ¼ of.....	15	"	"	160
All of.....	17	"	"	640
All of.....	19	"	"	641.04
Forward.....	.....	.....	.....	83,520.00
Brought forward...	.....	.....	.....	83,520.00
All of.....	21	1	15	640
All of.....	23	"	"	640
S. E. ¼ & W. ½	25	"	"	480
E. ½	27	"	"	320
All of.....	29	"	"	640
All of.....	31	"	"	641.28
All of.....	33	"	"	640
All of.....	35	"	"	640
All of.....	1	2	15	639.92
All of.....	3	"	"	644.40
All of.....	5	"	"	638.64
All of.....	7	"	"	626.40
All of.....	9	"	"	640
All of.....	11	"	"	640
All of.....	13	"	"	640
W. ½ of.....	15	2	15	320
All of.....	17	"	"	640
N. E. ¼, N. W. ¼ of S. E. ¼ & W. ½.....	19	"	"	512.40
All of.....	21	"	"	640
W. ½ of N. E. ¼, W. ½ of S. E. ¼, S. E. ¼, & E. ½ of S. W. ¼.....	23	"	"	280
E. ½ of N. E. ¼.....	25	"	"	80
E. ½ of N. W. ¼, N. W. ¼ of N. W. ¼, & W. ½ of N. E. ¼.....	27	"	"	200
All of.....	29	"	"	640
Forward.....	.....	.....	.....	95,953.04
Brought forward...	.....	.....	.....	95,953.04
N. E. ¼ of N. W. ¼.....	31	2	15	40
N. ½ of N. W. ¼ & N. W. ¼ of N. E. ¼	33	"	"	120
All of.....	1	3	15	641.60
All of.....	3	"	"	628.68
All of.....	5	"	"	635.48
All of.....	7	"	"	641.36
All of.....	9	"	"	640
All of.....	11	"	"	640
All of.....	13	"	"	640
All of.....	15	"	"	640
All of.....	17	"	"	640
All of.....	19	"	"	650
All of.....	21	"	"	640
All of.....	23	3	15	640
E. ½ of N. E. ¼ & S. ½...	25	"	"	400
All of.....	27	"	"	640
All of.....	29	"	"	640
All of.....	31	"	"	658.40
All of.....	33	"	"	646
All of.....	35	"	"	640
All of.....	1	4	15	633.18
All of.....	3	"	"	636.62
All of.....	5	"	"	639.54
All of.....	7	"	"	634.40
All of.....	9	"	"	640
Forward.....	.....	.....	.....	110,592.30

368 Brought forward.. .... 110,592.30

All of.....	11	4	15	640
All of.....	13	"	"	640
All of.....	15	"	"	640
All of.....	17	"	"	640
All of.....	19	"	"	639.64
All of.....	21	"	"	640
All of.....	23	"	"	640
All of.....	25	"	"	640
All of.....	27	"	"	640
All of.....	29	"	"	640
All of.....	31	"	"	644
All of.....	33	"	"	640
All of.....	35	"	"	640
Lot 3.....	1	1	16	40
E. ½ of.....	13	"	"	320
E. ½ of.....	25	"	"	320
E. ½ of.....	1	2	16	319.98
E. ½ of.....	13	"	"	320
E. ½ of.....	1	3	16	320.30
E. ½ of.....	13	"	"	320
E. ½ of.....	25	"	"	320
E. ½ of.....	1	4	16	316.29
E. ½ of.....	13	"	"	320
E. ½ of.....	25	"	"	320
Total acres in Franklin Co....	.....	.....	.....	122,152.51

EXHIBIT C.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Dakota County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
W. ½ of N. E. ¼	3	27	6	80	E. ½ of N. E. ¼, N. E. ¼ of N. W. ¼, & S. E. ¼	1	27	7	280.40
Lots 1 & 2	35	"	"	29.44	N. E. ¼	3	"	"	160.60
S. W. ¼ of S. E. ¼	1	28	6	40	E. ½ of	5	"	"	321.09
S. W. ¼ of N. E. ¼ & E. ½ of N. W. ¼	3	"	"	116.38	N. E. ¼	9	"	"	160
S. W. ¼ of S. E. ¼ & S. S. W. ¼	11	"	"	200	S. W. ¼ of S. E. ¼	13	"	"	40
S. W. ¼ of S. W. ¼	13	"	"	40	N. W. ¼ of N. E. ¼ & N. W. ¼	15	"	"	200
S. ½ of N. W. ¼ & N. ½ of S. W. ¼	23	"	"	160	N. ½ of S. E. ¼, S. E. ¼ of S. E. ¼, & W. ½	17	"	"	440
N. W. ¼ of N. E. ¼ & N. E. ¼ of S. E. ¼	25	"	"	80	Lots 1 & 2	31	"	"	36.13
W. ½ of N. E. ¼, N. E. ¼ of N. E. ¼, S. E. ¼ of S. E. ¼, & W. ½ of S. W. ¼	27	"	"	240	Lots 1 & 2	35	"	"	39.04
S. E. ¼, E. ½ of N. W. ¼, E. ½ of S. W. ¼, & N. W. ¼ of S. W. ¼	35	"	"	360	N. E. ¼ of S. W. ¼ & N. W. ¼ of S. E. ¼	3	28	7	80
					Forward				3,103.08
Bro't forward				3,103.08	E. ½ of N. E. ¼ & E. ½ of S. E. ¼	33	28	7	160
S. E. ¼ of S. E. ¼	7	28	7	40	N. ½ of	35	"	"	320
S. ½ of N. W. ¼	11	"	"	80	W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼	3	27	8	120
N. E. ¼	15	"	"	160	E. ½ of S. E. ¼ & N. W. ¼ of S. E. ¼	5	"	"	123.98
E. ½ of S. E. ¼	17	"	"	80	W. ½ of S. W. ¼ & S. E. ¼ of S. W. ¼	9	"	"	120
E. ½, S. ½ of S. W. ¼	19	"	"	397.11	Lots 1 & 2	33	"	"	49
N. ½ of N. W. ¼	19	"	"	75.65	W. ½ of S. E. ¼ & S. E. ¼ of S. E. ¼	29	28	8	122.01
E. ½ of N. E. ¼, S. W. ¼ of N. E. ¼, E. ½ of S. E. ¼, N. W. ¼ of S. W. ¼, N. E. ¼ of N. W. ¼	25	"	"	280	Total acres in Dakota Co.				5,781.79
S. E. ¼ of N. E. ¼	27	"	"	40					
S. W. ¼	29	"	"	160					
E. ½ of N. E. ¼, S. W. ¼, E. ½ of N. W. ¼, & S. W. ¼ of N. W. ¼	31	"	"	351.96					

369 *Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Dixon County, Nebraska.*

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
All of	5	27	4	645.68	S. ½ of	15	27	5	320
W. ½ of N. W. ¼	11	"	"	80	N. E. ¼, N. E. ¼ of N. W. ¼	17	"	"	200
E. ½ of	19	"	"	320	W. ½ of N. W. ¼ & W. ½ of S. W. ¼	23	"	"	160
N. ½ of N. W. ¼ & N. W. ¼ of N. E. ¼	29	"	"	120	Lots 1, 2, 3, & 4	35	"	"	43.86
All of	1	28	4	622.48	S. ½ of N. W. ¼	1	28	5	80
N. E. ¼	13	"	"	160	E. ½ of N. W. ¼ & S. W. ¼ of S. W. ¼	3	"	"	119.24
N. E. ¼	21	"	"	160	S. E. ¼ of N. E. ¼, E. ½ of S. E. ¼, & S. W. ¼ of S. E. ¼	5	"	"	160
W. ½ of S. W. ¼ & N. E. ¼ of S. W. ¼	23	"	"	120	W. ½ of N. E. ¼, S. E. ¼	7	"	"	240
W. ½ & W. ½ of S. E. ¼	25	"	"	400	N. W. ¼	7	"	"	155.60
W. ½ of	31	"	"	314.80					
W. ½ of N. E. ¼ & S. E. ¼ of N. E. ¼	5	27	5	120.65	Forward				4,782.35
N. W. ¼	5	"	"	160.04					
W. ½ of S. E. ¼	9	"	"	80					
Carried				4,782.35	E. ½ of N. E. ¼, W. ½ of N. W. ¼	21	28	5	160
S. W. ¼ of N. E. ¼, S. ½ of S. E. ¼	9	28	5	120	W. ½ of S. E. ¼, S. ½ of S. W. ¼	23	"	"	160
W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼	9	"	"	120	N. ½ of N. W. ¼ & N. E. ¼	23	"	"	240
And N. W. ¼	9	"	"	160	N. ½ of N. E. ¼, W. ½ of N. W. ¼, N. E. ¼ of N. W. ¼, W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼	25	"	"	320
N. ½ of S. W. ¼ & N. W. ¼	11	"	"	240	N. ½, E. ½ of S. E. ¼, & W. ½ of S. W. ¼	29	"	"	480
S. E. ¼ & S. E. ¼ of S. W. ¼	13	"	"	200	All of	31	"	"	631.20
N. ½ of N. E. ¼	17	"	"	80	Lots 1 & 2	31	27	6	17.71
W. ½ of N. E. ¼, N. W. ¼ of S. E. ¼	19	"	"	120	Lots 1 & 2	33	"	"	20.34
W. ½ of	19	"	"	315.40					

Lands Patented to the Burlington and Missouri River Railroad Co., &c.—Cont'd.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
N. W. ¼ of N. E. ¼, S. E. ¼ of N. W. ¼	5	28	6	76.79	N. E. ¼, E ½ of S. E. ¼	19	28	6	240
S. ½ of	7	"	"	306.71	N. W. ¼ of N. W. ¼	19	"	"	34.38
S. E. ¼ of N. E. ¼, S. W. ¼ of N. W. ¼	9	"	"	80	E. ½ of S. W. ¼, S. W. ¼ of S. W. ¼	21	"	"	120
S. ½ of N. E. ¼, S. ½, & S. ½ of N. W. ¼	17	"	"	480	Forward	....	.....	.....	9,504.88
Carried	....	.....	.....	9,504.88	S. W. ¼ of S. W. ¼	31	28	6	35.94
S. E. ¼ of N. W. ¼	21	28	6	40	All of	33	"	"	640
S. ½ of N. E. ¼ & N. E. ¼ of N. E. ¼, S. ½, & S. ½ of N. W. ¼	29	"	"	520	Total acres in Dixon Co.	.....	.....	.....	10,740.82

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Cedar County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
N. E. ¼	1	28	1 W.	161.28	W. ½ of N. E. ¼, S. E. ¼ of N. E. ¼	17	28	1 E.	120
S. W. ¼	3	"	"	160	W. ½ & S. E. ¼	17	"	"	480
N. E. ¼	7	"	"	160	E. ½ & E. ½ of S. W. ¼	23	"	"	400
S. E. ¼	17	"	"	160	All of	25	"	"	640
W. ½	19	"	"	312.16	W. ½ of N. E. ¼ & S. E. ¼	27	"	"	240
W. ½ of N. W. ¼ & N. E. ¼ of N. W. ¼	25	"	"	120	S. ½ of N. E. ¼, S. ½ & S. ½ of N. W. ¼	29	"	"	480
S. E. ¼ & N. ½ of S. W. ¼	29	"	"	240	N. E. ¼ and S. W. ¼	31	"	"	300.64
S. E. ¼	31	"	"	160	N. ½ of	33	"	"	320
S. E. ¼	35	"	"	160	W. ½ of	35	"	"	320
N. ½ of	1	28	1 E.	316.86	W. ½ of	13	28	2	320
All of	3	"	"	639.79	Forward	....	.....	.....	6,966.29
All of	7	"	"	595.56					
E. ½ of N. W. ¼ & E. ½ of S. W. ¼	9	"	"	160					
30 Carried	....	.....	.....	6,966.29	S. W. ¼	19	28	3	159.65
E. ½ of	15	28	2	320	S. ½ of	25	"	"	320.00
All of	17	"	"	610	S. E. ¼ & S. ½ of S. W. ¼	31	"	"	239.30
W. ½ of	19	"	"	305.76	N. W. ¼ & S. ½ of S. E. ¼	33	"	"	240
All of	27	"	"	640	All of	35	"	"	640
W. ½ of S. W. ¼	31	"	"	71.82	Total acres in Cedar Co.	.....	.....	.....	11,500.82
N. ½ of	35	"	"	320					
S. E. ¼	11	28	3	160					
N. ½ and S. E. ¼	17	"	"	480					

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Wayne County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
All of	1	25	1 E.	640.40	All of	25	25	1 E.	640
All of	3	"	"	646.60	E. ½ of S. E. ¼, S. W. ¼ of S. E. ¼, S. ½ of S. W. ¼, & N. W. ¼ of N. W. ¼	27	"	"	240
E. ½ of S. E. ¼ & W. ½ of S. W. ¼	5	"	"	160	S. E. ¼ of S. E. ¼, W. ½ of S. W. ¼, and W. ½ of N. W. ¼	31	"	"	159.40
All of	7	"	"	622.28	N. E. ¼, N ½ of S. E. ¼, E. ½ of S. W. ¼	33	"	"	160
E. ½ & S. W. ¼	9	"	"	480	S. ½ of	35	"	"	320
N. E. ¼, N. E. ¼ of S. E. ¼, E. ½ of S. W. ¼, & E. ½ of N. W. ¼	11	"	"	360	E. ½ of N. E. ¼ & N. W. ¼ of N. E. ¼	1	26	1	120.15
N. E. ¼ and S. W. ¼	13	"	"	320	S. ½ of	3	"	"	320
W. ½ of N. E. ¼, W. ½ of S. E. ¼, & W. ½	15	"	"	480	Forward	....	.....	.....	6,468.83
S. ½ of	17	"	"	320					
N. E. ¼	19	"	"	160					
N. E. ¼	21	"	"	160					
N. E. ¼	23	"	"	160					

Lands Patented to the Burlington and Missouri River Railroad Co., &c.—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Carried forward				6,468.83
E. ½ and N. W. ¼	9	26	1	480
S. ½ of	11	"	"	320
N. W. ¼	15	"	"	160
N. E. ¼	21	"	"	160
W. ½ and N. E. ¼	23	"	"	480
W. ½ and N. E. ¼	27	"	"	480
S. E. ¼	29	"	"	160
W. ½ and S. E. ¼	31	"	"	459.24
E. ½ of	33	"	"	320
S. ½ of	35	"	"	320
N. ½ of S. W. ¼	1	27	1	80
N. E. ¼ and S. W. ¼	3	"	"	320.44
S. ½ of	5	"	"	320
W ½ and S. E. ¼	7	"	"	445.40
E. ½ and N. W. ¼	9	27	1	480
S. E. ¼	11	"	"	160
N. ½ of S. E. ¼	13	"	"	80
W. ½ and S. E. ¼	17	"	"	480
W. ½ and N. E. ¼	21	"	"	480
W. ½ of S. E. ¼ & N. E. ¼ of S. E. ¼	21	"	"	120
W. ½ and S. E. ¼	23	"	"	480
S. ½ of N. W. ¼	27	"	"	80
E. ½ of	29	"	"	320
W. ½ of S. E. ¼, S. W. ¼ & S. ½ of N. W. ¼	31	"	"	302.45
W. ½ of	33	"	"	320
Forward				14,276.36
Carried forward				14,276.36
W. ½ of N. E. ¼ & S. E. ¼ of N. E. ¼	35	27	1	120
W. ½ of S. W. ¼ & S. E. ¼ of N. W. ¼	35	"	"	120
N. W. ¼ of S. E. ¼ & N. W. ¼	5	25	2	202.20
W. ½ of S. W. ¼ & N. E. ¼ of S. W. ¼	5	"	"	120
W. ½ of S. E. ¼ and W. ½	7	"	"	395
E. ½ of N. W. ¼	9	"	"	80
N. W. ¼	17	"	"	160
All of	19	"	"	640.52
W. ½ of N. W. ¼	23	"	"	80
S. E. ¼ & E. ½ of N. W. ¼	27	"	"	240
W. ½ of N. E. ¼, W. ½ of S. E. ¼, and W. ½	29	"	"	480
All of	31	"	"	640.52
S. ½ of	33	25	2	320
N. W. ¼	35	"	"	160
W. ½ of	7	26	2	309
W. ½ of	11	"	"	320
E. ½ of S. W. ¼	17	"	"	80
N. W. ¼ and N. E. ¼ of S. W. ¼	19	"	"	196.43
S. ½ of	21	"	"	320
N. E. ¼	35	"	"	160
N. ½ of S. W. ¼	3	27	2	80
N. ½ of	5	"	"	320.52
S. E. ¼ of S. W. ¼	7	"	"	40
N. ½ of S. W. ¼	11	"	"	80
E. ½ of N. E. ¼ & N. W. ¼ of N. E. ¼	15	"	"	120
Forward				20,060.55
371 Bro't over				20,060.55
S. ½ of S. E. ¼	17	27	2	80
N. ½ of N. E. ¼	19	"	"	80
S. ½ of N. W. ¼ & W. ½ of S. W. ¼	1	26	3	160
S. E. ¼	5	"	"	160
N. ½ of	11	"	"	320
N. E. ¼	17	"	"	160
N. ½ of N. E. ¼, N. ½ of N. W. ¼	1	27	3	158.52
E. ½ of S. W. ¼ & N. W. ¼ of S. W. ¼	1	"	"	120
All of	3	27	3	632.04
W. ½ of	7	"	"	318.52
W. ½ of N. E. ¼ & N. W. ¼	11	"	"	240
E. ½ of N. E. ¼ & W. ½ of S. E. ¼	33	"	"	160
S. ½ of S. E. ¼	35	"	"	80
Total acres in Wayne county				22,729.63

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Pierce County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
All of	1	25	1	639.40
N. W. ¼	3	"	"	160.41
All of	11	"	"	640
E. ½ & N. W. ¼	13	"	"	480
E. ½, S. W. ¼ & N. W. ¼ of S. W. ¼	13	"	"	120
All of	15	"	"	640
N. ½ and S. W. ¼	23	"	"	480
All of	25	"	"	640
N. E. ¼, W. ½ of S. E. ¼, N. E. ¼ of S. W. ¼	27	"	"	280
S. ½ of N. E. ¼, N. E. ¼ of N. E. ½, S. E. ¼, & S. ½ of S. W. ¼	35	"	"	360
N. ½ of	1	26	1	320
N. W. ¼	3	"	"	160.99
E. ½ and N. W. ¼	5	"	"	481.08
N. W. ¼ of N. W. ¼	7	"	"	39.02
All of	13	"	"	640
N. ½ & W. ½ of S. W. ¼	13	"	"	400
W. ½ of N. E. ¼ & N. W. ¼	23	"	"	240
N. ½ of N. W. ¼, S. E. ¼ of N. W. ¼, N. E. ¼ of S. W. ¼	25	"	"	160
S. ½ of N. E. ¼	29	"	"	80
S. ½ and N. E. ¼	7	27	1	478.48
Forward				7,439.38

Lands Patented to the Burlington and Missouri River Railroad Co., &c.—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				7,439.38
S. ½ of	21	27	1	320
S. E. ¼	29	"	"	160
S. ½ of S. W. ¼	31	"	"	81.36
W. ½ of	33	"	"	320
S. E. ¼ of S. W. ¼ & N. W. ¼ of N. W. ¼	35	"	"	80
S. ½ of N. E. ¼ & S. E. ¼ W. ½ of N. E. ¼, E. ½ of S. W. ¼, W. ½ of S. E. ¼, & S. E. ¼ of S. E. ¼	3	25	2	240
S. W. ¼ of N. E. ¼	11	"	"	280
	15	"	"	40
Bro't forward				10,916.46
All of	31	25	2	636
S. ½ of	33	"	"	320
W. ½ of N. E. ¼, S. E ¼ of N. E. ¼	35	"	"	120
N. E. ¼	3	26	2	159.41
S. W. ¼	17	"	"	160
W. ½ of	31	"	"	311.92
W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼, & W. ½ of N. W. ¼	31	27	2	179.08
N. ½ and S. W. ¼ of S. W. ¼	1	28	2	379.33
All of	19	25	2	635.72
N. ½ of	21	"	"	320
S. E. ¼, N. ½ of N. W. ¼, S. ½ of S. W. ¼, & N. E. ¼ of S. W. ¼	23	"	"	360
S. W. ¼	25	"	"	160
N. ½ of N. E. ¼, S. W. ¼ of N. E. ¼, N. W. ¼ of S. E. ¼, and W. ½	29	"	"	480
Forward				10,916.46
S. E. ¼	3	28	2	160
N. E. ¼	9	"	"	160
W. ½ N. E. ¼ & W. ½ of S. E. ¼	21	"	"	160
N. E. ¼ & E. ½ of N. W. ¼	25	"	"	240
W. ½ of S. E. ¼ & W. ½ of N. W. ¼	35	"	"	160
Total acres in Pierce Co.				14,062.20

372 *Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Stanton County, Nebraska.*

Parts of section.	S.	T.	R.	Acres.
S. E. ¼ of N. E. ¼	1	22	1	40
S. W. ¼ of N. W. ¼	17	23	1	40
S. E. ¼	31	"	"	160
N. E. ¼	33	"	"	160
N. W. ¼ of N. E. ¼	35	"	"	40
All of	1	24	1	634.04
S. ½ of N. E. ¼ & N. W. ¼	11	"	"	240
S. E. ¼	17	"	"	160
S. ½ of S. E. ¼, S. W. ¼, and W. ½ of N. W. ¼	21	"	"	320
E. ½ of N. E. ¼, N. W. ¼ of N. E. ¼, S. E. ¼, N. W. ¼ of S. W. ¼, N. ½ of N. W. ¼, & S. W. ¼ of N. W. ¼	23	"	"	440
S. E. ¼ of N. E ¼ and W. ½ of N. W. ¼	27	"	"	120
E. ½ of	29	24	1	320
S. W. ¼ & N. W. ¼ of N. W. ¼	33	"	"	200
N. W. ¼ of S. E. ¼	17	23	3	40
N. E. ¼ of N. E. ¼	27	"	"	40
N. E. ¼	11	24	2	160
W. ½ of N. W. ¼	31	"	"	64.87
Total acres in Stanton Co.				3,178.91
In Cuming County.				
S. E. ¼ of N. W. ¼	19	23	5	40
Lots 1 and 2	11	24	5	21.36

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Madison County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
N. ½ of S. W. ¼	1	22	1	80
S. W. ¼, N. ½ of N. E. ¼, & S. ½ of S. E. ¼	3	"	"	319.51
All of	5	"	"	638.68
All of	7	"	"	640.80
All of	9	"	"	640
S. ½ of	11	"	"	320
S. W. ¼	13	"	"	160
All of	15	"	"	640
All of	17	"	"	640
N. W. ¼	21	"	"	160
N. ½ and S. W. ¼	23	"	"	480
W. ½ of	25	"	"	320
E. ½ of	27	22	1	320
N. E. ¼	35	"	"	160
S. ½ of S. W. ¼	3	23	1	80
S. E. ¼ of N. W. ¼ & S. E. ¼ of S. E. ¼	5	"	"	80
N. ½ of	7	"	"	314.92
All of	9	"	"	640
N. E. ¼ of N. W. ¼	13	"	"	40
S. ½ of	15	"	"	320
S. W. ¼	17	"	"	160
Forward				7,153.91

Lands Patented to the Burlington and Missouri River Railroad Co., &c.—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				7,153.91
All of	19	23	1	632.08
E. ½ of	21	"	"	320
E. ½ of N. W. ¼ & E. ½ of S. W. ¼	21	"	"	160
All of	23	"	"	640
S. ½ of S. W. ¼ & N. ½ of N. W. ¼	25	"	"	160
N. ½ of N. E. ¼, N. E. ¼ of N. W. ¼, S. ½ of S. E. ¼, & S. ½ of S. W. ¼	27	"	"	280
W. ½ of	29	"	"	320
N. E. ¼, S. ½, & S. ½ of N. W. ¼	31	"	"	552.04
All of	33	"	"	640
E. ½ of N. E. ¼ & S. ½ of N. W. ¼	35	"	"	160
E. ½ and N. W. ¼	1	24	1	479.42
N. W. ¼ of N. E. ¼, S. E. ¼, S. W. ¼, & N. W. ¼ of S. W. ¼	5	24	1	321.19
W. ½ of N. E. ¼, S. E. ¼ of N. E. ¼, and W. ½	7	"	"	432.92
S. ½ of N. W. ¼	9	"	"	80
N. ½ of N. E. ¼ & S. ½ of S. E. ¼	13	"	"	160
S. W. ¼	17	"	"	160
E. ½ of N. E. ¼	19	"	"	80
S. E. ¼ of S. W. ¼ & N. W. ¼ of S. W. ¼	21	"	"	80
N. E. ¼ of N. E. ¼	25	"	"	40
W. ½ and S. E. ¼	3	21	2	477.79
E. ½ of	5	"	"	317.80
E. ½ of	7	"	"	320
N. E. ¼	9	"	"	160
Forward				14,127.15

Parts of section.	S.	T.	R.	Acres.
Bro't forward				14,127.15
S. ½ of	11	21	2	320
W. ½ of N. W. ¼	13	"	"	80
N. W. ¼	19	"	"	163.40
N. E. ¼	21	"	"	160
S. E. ¼ and E. ½ of N. W. ¼	27	"	"	240
W. ½ and S. E ¼	31	"	"	484
N. E. ¼, W. ½, S. E. ¼, and W. ½	1	22	2	559.60
N. E. ¼, N. ½ of S. E. ¼, & E. ½ of N. W. ¼	3	"	"	318.61
S. ½ of	15	"	"	320
S. ½ of	19	"	"	319.85
N. ½ of N. E. ¼ & W. ½ of S. W. ¼	21	"	"	160
E. ½ and N. ½ of N. W. ¼	23	"	"	400
W. ½ and S. E. ¼	29	22	2	480
All of	33	"	"	640
W. ½ of N. W. ¼ & S. E. ¼ of N. W. ¼	35	"	"	120
S. ½ of	1	23	2	320
N. ½ of S. E. ¼	3	"	"	80
N. E. ¼	5	"	"	160.42
S. ½ of N. E. ¼ and S. ½	7	"	"	399.75
S. E. ¼ of N. E. ¼ and S. ½	9	"	"	360
E. ½ of	11	"	"	320
W. ½ and S. E. ¼	15	"	"	480
All of	17	"	"	640
W. ½ and S. E ¼	19	"	"	476.58
All of	21	"	"	640
Forward				22,769.36

373	Parts of section.	S.	T.	R.	Acres.
	Bro't forward				22,769.36
	All of	23	23	2	640
	All of	25	"	"	640
	N. E. ¼	27	"	"	160
	All of	29	"	"	640
	S. E. ¼	31	"	"	160
	N. ½ of S. W. ¼	31	"	"	78 30
	All of	33	"	"	640
	N. E. ¼	35	"	"	160
	E. ½ of N. E. ¼, N. W. ¼ of N. E. ¼	1	24	2	131.27
	W. ½ of N. W. ¼, N. W. ¼ of S. W. ¼	1	"	"	123.67
	N. ¼ of S. E. ¼, & S. E. ¼ of S. E. ¼	1	"	"	120
	N. W. ¼ of S. E. ¼, N. ½ of S. W. ¼, N. W. ¼	3	"	"	281.25
	W. ½ of N. E. ¼ & N. E. ¼ of N. E. ¼	3	"	"	122.79
	All of	5	24	2	642.98
	All of	7	"	"	634.16
	All of	9	"	"	640
	S. ½ of S. E. ¼ & S ½ of S. W. ¼	11	"	"	160
	E. ½ of N. E. ¼, E. ½ of S. E. ¼	13	"	"	160
	All of	15	"	"	640
	All of	17	"	"	640
	N.E. ¼ & N. ½ of N.W. ¼	19	"	"	239.24
	N. W. ¼ of S. E. ¼	27	"	"	40
	S. E. ¼ of S. W. ¼ and N. W. ¼	35	"	"	200
	All of	1	21	3	640
	All of	3	"	"	637.20
	All of	5	"	"	635.80
	Forward				32,576.02

Bro't forward				32,576.02
All of	7	21	3	638.24
All of	9	"	"	640
All of	11	"	"	640
N. ½ of N. E. ¼, S. ½ of S. E. ¼, and S. ½ of S. W. ¼	13	"	"	240
W. ½ and S. E. ¼	15	"	"	480
All of	17	"	"	640
All of	19	"	"	642.56
All of	21	"	"	640
E. ½ of	23	"	"	320
S. E. ¼	25	"	"	160
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	641.40
All of	33	21	3	640
N. ½ and S. W. ¼	35	"	"	480
N. ½ and S. E ¼	3	22	3	477.20
E ½ and S. W. ¼	5	"	"	477.30
N. E. ¼	7	"	"	160
N. ½ of S. E. ¼, N. ½ of S. W. ¼, & N. ½	9	"	"	480
N. ½ of	11	"	"	320
S. W. ¼ of S. W. ¼	15	"	"	40
S. ½ of N. W. ¼ and S. ½	17	"	"	400
All of	19	"	"	641.12
N. ½ of N. E. ¼, S. ½ of S. E. ¼, and N. W. ¼	21	"	"	320
Forward				43,973.84

Lands Patented to the Burlington and Missouri River Railroad Co., &c.—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				43,973.84
All of	23	22	3	640
N. W. ¼	25	"	"	160
S. ½ of	27	"	"	320
N. W. ¼ and S. E. ¼	29	"	"	320
All of	31	"	"	636.80
All of	33	"	"	640
All of	35	"	"	640
E. ½ of S. E. ¼	7	23	3	80
W. ½ and S. ½ of S. E. ¼	9	"	"	400
E. ½ and S. W. ¼	13	"	"	480
S. W. ¼ of N. E. ¼, W. ½ of S. E. ¼, S. E. ¼ of S. E. ¼, and W. ½	15	"	"	480
All of	17	"	"	640
All of	21	"	"	640
N. W. ¼, E. ½ of S. W. ¼, and S. W. ¼ of S. W. ¼	23	23	3	280
N. E. ¼, E. ½ of N. W. ¼, and S. W. ¼ of N. W. ¼	25	"	"	280
N. ½, N. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, & N. W. ¼ of S. E. ¼	27	"	"	480
All of	29	"	"	640
All of	31	"	"	649.92
All of	33	"	"	640
S. ½ of N. W. ¼ & S. W. ¼	35	"	"	240
All of	1	24	3	638.84
N. ½ and S. W. ¼	3	"	"	479.58
Forward				54,378.98
Bro't forward				54,378.98
W. ½ of S. E. ¼	3	24	3	80
All of	5	"	"	638.88
All of	7	"	"	636.80
E. ½ of	9	"	"	320
S. W. ¼	11	"	"	160
E. ½ of N. E. ¼, E. ½ of S. E. ¼, & W. ½	13	"	"	480
E. ½, N. W. ¼, & W. ½ of S. W. ¼	15	"	"	560
S. ½ of	17	"	"	320
N. ½ of N. W. ¼	21	"	"	80
N. W. ¼ of S. E. ¼	23	"	"	40
S. ½ of S. E. ¼	33	"	"	80
S. ½ of N. E. ¼, S. E. ¼, & S. ½ of N. W. ¼	35	"	"	320
All of	1	21	4	640.40
All of	3	"	"	638.84
All of	5	"	"	640.12
All of	7	"	"	633.48
All of	9	"	"	640
All of	11	"	"	640
E. ½, E. ½ of S. W. ¼, S. W. ¼ of S. W. ½, & S. ½ of N. W. ¼	13	"	"	520
W. ½ & S. E. ¼	15	"	"	480
All of	17	"	"	640
All of	21	"	"	640
Forward				64,207.50
374 Bro't forward				64,207.50
All of	23	21	4	640
All of	25	"	"	640
N. ½ and S. ½	27	"	"	480
N. ½ of S. W. ¼	27	"	"	80
E. ½ of N. E. ¼, W. ½ of N. W. ¼	29	"	"	160
& W. ½ of S. W. ¼	29	"	"	80
All of	31	"	"	637.50
S. W. ¼	33	"	"	160
N. E. ¼, N. E. ¼ of S. W. ¼, E. ½ of N. W. ¼, & N. W. ¼ of N. W. ¼	35	"	"	320
All of	1	22	4	639.60
N. ½ and S. W. ¼	3	"	"	482.60
All of	5	"	"	645.04
All of	7	"	"	625.36
All of	9	22	4	640
S. ½ of	11	"	"	320
E. ½ of S. W. ¼ & S. W. ¼ of S. W. ¼	13	"	"	120
N. ½ of N. E. ¼, S. ½ of S. E. ¼, & W. ½	15	"	"	480
All of	17	"	"	640
All of	19	"	"	426
All of	21	"	"	640
S. ½ of N. E. ¼, N. E. ½ of N. E. ¼, S. E. ¼, S. ½ of S. W. ¼, & N. W. ¼ of N. W. ¼	23	"	"	400
All of	25	"	"	640
W. ½ of	27	"	"	320
Forward				74,623.60
Bro't forward				74,623.60
All of	29	22	4	640
All of	31	"	"	627.64
All of	33	"	"	640
All of	35	"	"	640
S. W. ¼ of S. W. ¼	1	23	4	40
W. ½ and S. E. ¼	3	"	"	479.99
All of	5	"	"	639.38
E. ½, S. W. ¼, & E. ½ of N. W. ¼	7	"	"	553.80
W. ½ and S. E. ¼	9	"	"	480
E. ½ of	11	"	"	320
E. ½ and S. W. ¼	13	"	"	480
E. ½ of S. E. ¼, S. W. ¼ of S. E. ¼, W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼, W. ½ of N. W. ¼	15	"	"	320
All of	17	23	4	640
E. ½ of S. E. ¼	19	"	"	80
N. W. ¼ & N. W. ¼ of S. W. ¼	21	"	"	200
All of	23	23	4	640
All of	25	"	"	640
N. E. ¼, S. ½ of S. W. ¼	27	"	"	240
S. ½ of N. E. ¼, N. W. ¼ of N. E. ¼, & W. ½	29	"	"	440
All of	21	"	"	630.36
All of	33	"	"	640
All of	35	"	"	640
Forward				85,274.77
Bro't forward				85,274.77
All of	1	24	4	638.56
E. ½, E. ½ of N. W. ¼, N. W. ¼ of N. W. ¼	3	"	"	435.84
All of	5	"	"	629.98
W. ½ of N. E. ¼ & N. W. ¼	9	"	"	240
N. ½ & N. ½ of S. E. ¼	11	"	"	490
N. E. ¼	13	24	4	160
N. E. ¼ of N. E. ¼	15	"	"	40
S. E. ¼	27	"	"	160
Total acres in Madison Co.				87,979.15

EXHIBIT D.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Platte County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
N. E. ¼	3	20	1	156.48	N. ½ of	5	19	3	325.12
W. ½ of S. W. ¼ & W. ½ of N. W. ¼	3	"	"	158.03	N. ½ of	7	"	"	318.98
					All of	1	20	3	611.76
N. ½ of N. E. ¼, S. ½ of S. E. ¼ & N. W. ¼	9	"	"	320	All of	3	"	"	603.96
					All of	5	"	"	601.64
N. ½ of S. E. ¼, N. ½ of S. W. ¼	11	"	"	160	N. ½ of	7	"	"	310.95
					All of	9	"	"	640
N. W. ¼ of N. W. ¼	11	"	"	40	All of	11	"	"	640
W. ½ of	1	20	2	307	All of	13	"	"	640
All of	3	"	"	611.54	All of	15	"	"	640
All of	7	"	"	634.20	E. ½ of	17	"	"	320
All of	9	"	"	640					
All of	11	"	"	640	Forward				9,948.02
All of	19	"	"	628.36					
375 Bro't forward				9,948.02	All of	7	19	4	625.60
S. W. ¼ of N. W. ¼ & W. ½ of S. W. ¼	19	20	3	106.24	All of	9	"	"	640
					S. W. ¼	11	"	"	160
N. ½ S. W. ¼ & W. ½ of S. E. ¼	21	"	"	560	N. ½ and S. W. ¼	15	"	"	480
					All of	17	"	"	640
All of	23	"	"	640	All of	19	"	"	634.54
N. ½ of	25	"	"	320	N. ½ of	21	"	"	320
N. E. ¼ & E. ½ of S. E. ¼	27	"	"	240	N. W. ¼	29	"	"	160
S. ½ of N. W. ¼ & N. W. ¼ of S. W. ¼	29	"	"	120	N. E. ¼, N. ½ of S. E. ¼, S. E. ¼ of S. E. ¼, & N. E. ¼ of S. W. ¼	1	"	"	305.01
All of	31	"	"	622.84					
N. E. ¼ of N. E. ¼ & S. ½ of S. W. ¼	33	"	"	120	S. ½ of	3	"	"	320
					All of	5	"	"	619.12
N. W. ¼	35	"	"	160	N. ½ of N. E. ¼, S. W. ¼ of N. E. ¼, S. ½ & N. W. ¼	7	"	"	578.08
All of	1	19	4	645.60					
All of	3	"	"	657.28					
All of	5	"	"	654.32	Forward				20,276.65
Bro't forward				20,276.65	All of	23	20	4	640
All of	9	20	4	640	All of	25	"	"	640
S. ½ of S. W. ¼ & N. ½ of N. W. ¼	11	"	"	160	All of	27	"	"	640
					All of	29	"	"	640
S. W. ¼ of N. E. ¼ & S. W. ¼	13	"	"	200	All of	31	"	"	615.76
					All of	33	"	"	640
All of	15	"	"	640	All of	35	"	"	640
All of	17	"	"	640					
All of	19	"	"	617					
All of	21	"	"	640	Total acres in Platte Co.				28,269.41

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Antelope County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
N. W. ¼	5	23	5	160.55	All of	23	23	5	640
W. ½ of	7	"	"	314.64	All of	25	"	"	640
E. ½ of	9	"	"	320	All of	27	"	"	640
E. ½ & N. W. ¼	11	"	"	480	All of	29	"	"	640
All of	13	"	"	640	All of	31	"	"	636.12
N. ½ of N. E. ¼	15	"	"	80	All of	33	"	"	640
All of	17	"	"	640	All of	35	"	"	640
All of	19	"	"	634.64	N. ½ of N. W. ¼	1	24	5	74.56
N. ½ of N. E. ¼	21	"	"	80	W. ½ of	19	"	"	302.48
N. ½ of N. W. ¼, S. W. ¼ of N. W. ¼	21	"	"	120	N. W. ¼ of N. W. ¼	21	"	"	40
W. ½ of S. W. ¼	21	"	"	80	Forward				8,442.99

Lands Patented to the Burlington and Missouri River Railroad Co., &c.—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				8,442.99
All of	31	24	5	627.92
N. ½ and S. E. ¼	33	"	"	480
All of	35	"	"	640
All of	1	25	5	641.80
All of	3	"	"	640.84
All of	5	"	"	633.44
N. ½ of N. E. ¼, S. ½ of S. E. ¼	7	"	"	160
W. ½ of	7	"	"	311.36
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
N. ½ of	15	"	"	320
S. ½ of N. E. ¼, W. ½ of N. W. ¼	17	"	"	160
N. E. ¼ of S. E. ¼, S. W. ¼ of S. E. ¼	17	"	"	80
All of	35	23	6	640
S. ½, N. E. ¼, & S. ½ of N. W. ¼	3	24	6	569.66
All of	5	"	"	661.44
All of	7	"	"	610.24
All of	9	"	"	640
All of	17	"	"	640
W. ½ & N. E. ¼	19	"	"	450.32
N. ½ of	21	"	"	320
W. ½ of N. E. ¼ & W. ½ of S. E. ¼	23	"	"	160
E. ½ of	25	"	"	320
N. ½ of	29	"	"	320
Forward				32,057.42
N. E. ¼	17	25	6	160
S. W. ¼	19	"	"	166.78
All of	23	"	"	640
All of	25	"	"	640
All of	31	"	"	646.40
E. ½ of N. E. ¼	35	"	"	80
All of	1	23	7	640.76
All of	3	"	"	641.02
All of	5	"	"	635.52
All of	7	"	"	620.38
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
Forward				43,425.47
All of	15	23	7	640
All of	17	"	"	640
All of	19	"	"	624.80
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	628.92
All of	33	"	"	640
All of	35	"	"	640
N. W. ¼, S. ½ of N. E. ¼, & N. E. ¼ of N. E. ¼	1	25	7	274
N. E. ¼ of S. E. ¼	1	25	7	40
N. E ¼ of N. E. ¼	5	"	"	39.53
S. E. ¼	7	25	7	160
S. ½ & S. W. ¼ of N. W. ¼	9	"	"	360
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	639.36
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
Alf of	27	"	"	640
All of	29	"	"	640
Forward				56,432.08
Bro't forward				56,432.08
All of	31	25	7	640
All of	33	"	"	640
All of	35	25	7	640
Total acres in Antelope Co.				58,352.64

EXHIBIT E.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Boone County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
All of	5	18	5	640	All of	25	19	5	640
All of	7	"	"	638.04	All of	29	"	"	640
All of	1	19	5	644.16	All of	31	"	"	626.72
E ½ and S. W. ¼	3	"	"	484.10	S. ½ of	33	"	"	320
E. ½ of N. W. ¼	3	"	"	81.53	N.E. ¼ & E. ½ of N.W. ¼	35	"	"	240
E. ½ of	5	"	"	320.99	All of	1	20	5	622.44
W. ½ of S. W. ¼	7	"	"	66.69	All of	3	"	"	628.44
W. ½ of	9	"	"	320	All of	5	"	"	631.40
All of	11	"	"	640	All of	7	"	"	615.12
All of	13	"	"	640	All of	9	"	"	640
All of	15	"	"	640	All of	11	"	"	640
All of	19	"	"	617.52	All of	13	"	"	640
S. W. ¼	21	"	"	160					
All of	23	"	"	640	Forward				13,416.85
377 Bro't forward				13,416.85	All of	9	21	5	640
All of	15	20	5	640	N. ½ & S. E. ¼	11	"	"	480
All of	17	"	"	640	E. ½ of S. W. ¼ and N. W. ¼ of S. W. ¼	11	"	"	120
All of	19	"	"	615.28	N. ½ of N. W. ¼ & S. ½ of S. W. ¼	13	"	"	160
All of	21	"	"	640	N. ½ of N. E. ¼, S. W. ¼ of N. E. ¼	15	"	"	120
All of	23	"	"	640	W. ½ & S. E. ¼	15	"	"	480
All of	25	"	"	640	All of	17	"	"	640
All of	27	"	"	640	All of	19	"	"	641.24
W. ½ of S. E. ¼, S. W. ¼, and N. ½	29	"	"	560	All of	21	"	"	640
N. ½ of S. E. ¼, N. ½ of S. W. ¼ and N. ½	31	"	"	462.86	All of	23	"	"	640
E. ½ and S. W. ¼	33	"	"	480	All of	25	"	"	640
All of	35	"	"	640	All of	27	"	"	640
All of	1	21	5	642.88					
All of	3	"	"	645.64	Forward				28,427.31
All of	5	"	"	642.92					
All of	7	"	"	639.64					
Bro't forward				28,427.31	All of	23	22	5	640
All of	29	21	5	640	All of	25	"	"	640
All of	31	"	"	641.60	All of	27	"	"	640
All of	33	"	"	640	All of	29	"	"	640
All of	35	"	"	640	All of	31	"	"	640.48
All of	1	22	5	642.80	All of	33	"	"	640
All of	3	"	"	645.80	All of	35	"	"	640
All of	5	"	"	647	All of	1	18	6	640
All of	7	"	"	648.68	All of	3	"	"	640
All of	9	"	"	640	All of	5	"	"	640
All of	11	"	"	640	All of	7	"	"	645
All of	13	"	"	640	All of	9	"	"	640
All of	15	"	"	640	All of	11	"	"	640
All of	17	"	"	640	All of	13	"	"	640
All of	19	"	"	649.04					
All of	21	"	"	640	Forward				47,027.71
Bro't forward				47,027.71	All of	13	19	6	640
All of	15	18	6	640	All of	15	"	"	640
All of	17	"	"	640	All of	17	"	"	640
All of	19	"	"	649.88	All of	19	"	"	623.04
All of	21	"	"	600	All of	21	"	"	640
All of	23	"	"	607.92	All of	23	"	"	640
Lots No. 1 & 2	29	"	"	14.43	All of	25	"	"	640
N. ½ of N. E. ¼, S. E. ¼ of N. E. ¼	1	19	6	119.80	All of	27	"	"	640
					All of	29	"	"	640
E. ½ of S. E. ¼, S.W. ¼ of S. E. ¼	1	"	"	120	All of	31	"	"	627.88
S. ½ of S.W. ¼	1	"	"	80	All of	33	"	"	640
All of	3	"	"	639 60	All of	35	"	"	640
All of	5	"	"	640.56	All of	1	20	6	649.06
All of	7	"	"	621.68	All of	3	"	"	652.92
All of	9	"	"	640	Forward				62,434.48
All of	11	"	"	640					

Lands Patented to the Burlington and Missouri River Railroad Co., &c.—Cont'd.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
Bro't forward				62,434.48	All of	29	20	6	640
All of	5	20	6	668.64	All of	31	"	"	618.72
All of	9	"	"	640	All of	33	"	"	640
All of	11	"	"	640	S. W. ¼ of	35	"	"	160
All of	13	"	"	640	All of	1	21	6	641.48
N. ½ of N. E. ¼, S. E. ¼ of N. E. ¼	15	"	"	120	All of	3	"	"	643.96
N. E. ¼ of S. E. ¼	15	"	"	40	All of	5	"	"	641.12
S. ½ of S. E. ¼, W. ½ of N. W. ¼	19	"	"	147.58	All of	7	"	"	634.72
S. ½ of S. W. ¼ & N. W. ¼ of S. W. ¼	19	"	"	108.02	All of	9	"	"	640
N. W. ¼	21	"	"	160	All of	11	"	"	640
N. ½ of N. E. ¼, S. E. ¼ of N. E. ½	23	"	"	120	All of	13	"	"	640
N. E. ¼ of S. E. ¼	23	"	"	40	All of	15	"	"	640
S. ½ of S. W. ¼, E. ½ of N. W. ¼, & E. ½	25	"	"	480	All of	17	"	"	640
S. W. ¼	27	"	"	160	All of	19	"	"	637.28
					All of	21	"	"	640
					All of	23	"	"	640
					Forward				76,036.00

378 Bro't forward				76,036.00	All of	19	22	6	623.60
All of	25	21	6	640	All of	21	"	"	640
All of	27	"	"	640	All of	23	"	"	640
All of	29	"	"	640	All of	25	"	"	640
All of	31	"	"	640 04	All of	27	"	"	640
All of	33	"	"	640	All of	29	"	"	640
All of	35	"	"	640	All of	31	"	"	633.36
All of	1	22	6	640	All of	33	"	"	640
All of	3	"	"	642.04	All of	35	"	"	640
All of	5	"	"	639.40	All of	1	18	7	640
All of	7	"	"	619.68	All of	3	"	"	640
All of	9	"	"	640	All of	5	"	"	640
All of	11	"	"	640	All of	7	"	"	628.80
All of	13	"	"	640	All of				
All of	15	"	"	640					
All of	17	"	"	640	Forward				93,902.92

Bro't forward				93,902.92	All of	5	19	7	640.24
All of	9	18	7	640	All of	7	"	"	626.52
All of	11	"	"	640	All of	9	"	"	640
All of	13	"	"	640	All of	11	"	"	640
All of	15	"	"	640	All of	13	"	"	640
All of	17	"	"	640	All of	15	"	"	640
All of	19	"	"	629.12	All of	17	"	"	640
All of	21	"	"	640	All of	19	"	"	628
All of	23	"	"	640	All of	21	"	"	640
All of	25	"	"	613.80	All of	23	"	"	640
All of	27	"	"	640	All of	25	"	"	640
All of	29	"	"	640	All of	27	"	"	640
All of	31	"	"	628.71	All of	29	"	"	640
All of	33	"	"	635.44	All of	31	"	"	629.36
All of	1	19	7	640					
All of	3	"	"	641.20	Forward				112,375.31

Bro't forward				112,375.31	All of	27	20	7	640
All of	33	19	7	640	All of	29	"	"	640
All of	35	"	"	640	All of	31	"	"	622.80
E. ½ of N. E. ¼	1	20	7	87.61	All of	33	"	"	640
All of	3	"	"	678.58	All of	35	"	"	640
All of	5	"	"	674.14	All of	1	21	7	640.38
All of	7	"	"	623.20	All of	3	"	"	636.84
All of	9	"	"	640	All of	5	"	"	641.52
All of	11	"	"	640	All of	7	"	"	629 44
S. W. ¼	13	"	"	160	All of	9	"	"	640
All of	15	"	"	640	E. ½ of S. E. ¼, E. ½ of S. W. ¼, & N. ½	11	"	"	480
All of	17	"	"	640	All of	13	"	"	640
All of	19	"	"	622	All of	15	"	"	640
All of	21	"	"	640					
All of	23	"	"	640					
All of	25	"	"	640	Forward				129,111.82

Lands Patented to the Burlington and Missouri River Railroad Co., &c.—Cont'd.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
Brought forward				129,111.82	All of	11	22	7	640
All of	17	21	7	640	All of	13	"	"	640
All of	19	"	"	637.40	All of	15	"	"	640
All of	21	"	"	640	All of	17	"	"	640
All of	23	"	"	640	All of	19	"	"	628.82
All of	25	"	"	640	All of	21	"	"	640
All of	27	"	"	640	All of	23	"	"	640
All of	29	"	"	640	All of	25	"	"	640
All of	31	"	"	639.80	All of	27	"	"	640
All of	33	"	"	640	All of	29	"	"	640
W. ½ of	35	"	"	320	All of	31	"	"	626.52
All of	1	22	7	639.20	All of	33	"	"	640
All of	3	"	"	678.78	All of	35	"	"	640
All of	5	"	"	640.40	All of	7	16	8	414.24
All of	7	"	"	628.80					
All of	9	"	"	640	Forward				147,085.78

379 Bro't forward				147,085.78	All of	21	18	8	640
All of	19	16	8	405.64	All of	23	"	"	640
All of	31	"	"	395.60	All of	25	"	"	640
All of	7	17	8	577	All of	27	"	"	640
All of	19	"	"	597.60	All of	29	"	"	640
All of	31	"	"	594.28	All of	31	"	"	641.42
All of	1	18	8	640	All of	33	"	"	635.20
All of	3	"	"	640	All of	35	"	"	625.96
All of	5	"	"	640	All of	1	19	8	641.68
All of	7	"	"	634.96	All of	3	"	"	642.88
All of	9	"	"	640	All of	5	"	"	640.64
All of	11	"	"	640	All of	7	"	"	619.14
All of	13	"	"	640	All of	9	"	"	640
All of	15	"	"	640					
All of	17	"	"	640	Forward				164,331.92
All of	19	"	"	633.84					

Brought forward				164,331.92	All of	5	20	8	657.78
All of	11	19	8	640	All of	7	"	"	607.20
All of	13	"	"	640	All of	9	"	"	640
All of	15	"	"	640	All of	11	"	"	640
All of	17	"	"	640	All of	13	"	"	640
All of	19	"	"	626.72	All of	15	"	"	640
All of	21	"	"	640	All of	17	"	"	640
All of	23	"	"	640	All of	19	"	"	614
All of	25	"	"	640	All of	21	"	"	640
All of	27	"	"	640	All of	23	"	"	640
All of	29	"	"	640	All of	25	"	"	640
All of	31	"	"	636.96	All of	27	"	"	640
All of	33	"	"	640	All of	29	"	"	640
All of	35	"	"	640	All of	31	"	"	615.52
All of	1	20	8	671.56					
All of	3	"	"	665.86	Forward				182,867.52

Bro't forward				182,867.52
All of	33	20	8	640
All of	35	"	"	640
Total acres in Boone Co.				184,147.52

EXHIBIT F.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Sherman County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
All of	1	13	13	639.28	All of	7	14	13	629.98
All of	3	"	"	639.90	All of	9	"	"	640
All of	5	"	"	637.98	All of	11	"	"	640
All of	7	"	"	616.74	All of	13	"	"	640
All of	9	"	"	640	All of	15	"	"	640
All of	11	"	"	640	All of	17	"	"	640
N. W. ¼	13	"	"	160	All of	19	"	"	630.24
N. ½ of	15	"	"	320	All of	21	"	"	640
All of	17	"	"	588.12	All of	23	"	"	640
N. ½ of	19	"	"	318.77	All of	25	"	"	640
S. E. ¼ & W. ½	1	14	13	479.18	All of	27	"	"	640
All of	3	"	"	637.21					
All of	5	"	"	637.50	Forward				13,974.90

380 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward				13,974.90
All of	29	14	13	640
All of	31	"	"	633.60
All of	33	"	"	640
All of	35	"	"	640
All of	1	15	13	639.10
All of	3	"	"	637.84
All of	5	"	"	639.34
All of	7	"	"	620.38
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	622.78
All of	21	"	"	640
All of	23	15	13	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	626.40
All of	33	"	"	640
All of	35	"	"	640
All of	1	16	13	627.80
All of	3	"	"	635.48
All of	5	"	"	635.16
All of	7	"	"	620.10
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
Forward				32,432.88

Parts of section.	S.	T.	R.	Acres.
Brought forward				32,432.88
All of	15	16	13	640
All of	17	"	"	640
All of	19	"	"	621.02
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	622.78
All of	33	"	"	640
All of	35	"	"	640
All of	1	13	14	614.99
All of	3	"	"	638.46
All of	5	"	"	638.86
All of	7	"	"	628.08
All of	9	13	14	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	633.28
All of	21	"	"	640
All of	23	"	"	640
N. ½ of	25	"	"	320
N. ½ of	27	"	"	320
All of	29	"	"	640
N. ½ of	31	"	"	319.84
All of	1	14	14	640.60
Forward				49,310.79

Parts of section.	S.	T.	R.	Acres.
Brought forward				49,310.79
All of	3	14	14	638.30
All of	5	"	"	530.11
All of	7	"	"	622.40
All of	9	"	"	519.10
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	599.50
All of	17	"	"	640
All of	19	"	"	621.34
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	574.58
All of	29	"	"	640
All of	31	"	"	626.40
All of	33	14	14	640
All of	35	"	"	612.95
All of	1	15	14	640.44
All of	3	"	"	637.58
All of	5	"	"	637.96
All of	7	"	"	625.98
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	522.29
All of	21	"	"	640
All of	23	"	"	640
Forward				67,319.72

Parts of section.	S.	T.	R.	Acres.
Brought forward				67,319.72
All of	25	15	14	640
All of	27	"	"	640
All of	29	"	"	563.10
All of	31	"	"	623.18
All of	33	"	"	640
All of	35	"	"	640
All of	1	16	14	628.88
All of	3	"	"	628.20
All of	5	"	"	629.86
All of	7	"	"	620.70
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	16	14	621.52
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	621.04
All of	33	"	"	640
All of	35	"	"	640
All of	1	13	15	638.44
All of	3	"	"	639.68
All of	5	"	"	640
All of	7	"	"	635.20
Forward				85,049.52

381 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd

Parts of section.	S.	T.	R.	Acres.
Brought forward	.....	.....	.....	85,049.52
All of	9	13	15	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	649
All of	19	"	"	637.14
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	638.40
All of	33	"	"	640
All of	35	"	"	640
All of	1	14	15	639.36
All of	3	14	15	640.16
All of	5	"	"	640.16
All of	7	"	"	626.32
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	625.98
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
Forward	.....	.....	.....	103,577.04

Parts of section.	S.	T.	R.	Acres.
Brought forward	.....	.....	.....	103,577.04
All of	31	14	15	631.74
All of	33	"	"	640
All of	35	"	"	640
All of	1	15	15	639.38
All of	3	"	"	638.88
All of	5	"	"	639.68
All of	7	"	"	626.30
All of	9	"	"	640
All of	11	"	"	560
All of	13	"	"	576.10
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	628.08
All of	21	"	"	640
All of	23	"	"	640
All of	25	15	15	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	628.06
All of	33	"	"	640
All of	35	"	"	640
All of	1	16	15	630.44
All of	3	"	"	632.06
All of	5	"	"	630.48
All of	7	"	"	610.36
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
Forward	.....	.....	.....	121,218.60

Parts of section.	S.	T.	R.	Acres.
Brought forward	.....	.....	.....	121,218.60
All of	15	16	15	640
All of	17	"	"	593
All of	19	"	"	628.24
All of	21	"	"	573.20
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	578.40
All of	29	"	"	640
All of	31	"	"	629.78
All of	33	"	"	649
All of	35	"	"	603.50
E. ½ of	1	13	16	320.11
E. ½ of	13	"	"	320
E. ½ of	25	13	16	320
E. ½ of	1	14	16	320.16
E. ½ of	13	"	"	320
E. ½ of	25	"	"	320
E. ½ of	1	15	16	319.84
E. ½ of	13	"	"	320
E. ½ of	25	"	"	320
E. ½ of	1	16	16	278.70
E. ½ of	13	"	"	320
E. ½ of	25	"	"	320
Total acres in Sherman Co.	.....	.....	.....	131,853.53

EXHIBIT G.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Howard County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
All of	3	15	9	639.94
N. E. ¼, E. ½ of N. W. ¼, E. ½ of S. E. ¼, & N. W. ¼ of S. W. ¼	5	"	"	359.16
W. ½ of N. E. ¼, N. W. ¼, N. W. ¼ of S. E. ¼, N. E. ¼ of S. W. ¼, & lots numbered 3, 4, 5, and 6	7	"	"	429.26
N. E. ¼ of S. W. ¼, lot No. 2, & N. ½ of	9	"	"	389.50
Lots 1 and 2, S. ½ of N. W. ¼, & S. W. ¼	17	"	"	330.50
N. ½ of	19	"	"	315.92
All of	1	16	9	638.92
All of	3	"	"	634.54
All of	5	"	"	634.02
All of	7	"	"	615.80
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
N. ½ of N. W. ¼, W. ½ of S. W. ¼, & E. ½ of	19	"	"	462.73
Forward	.....	.....	.....	8,650.29

382 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward				8,650.29
All of	21	16	9	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
S. W. ¼ & N. ½ of	31	"	"	463.20
All of	33	"	"	640
All of	35	"	"	640
W. ½ of	5	14	10	319.41
S. E. ¼ & N. W. ¼	7	"	"	315.47
All of	1	15	10	639
All of	3	"	"	638.46
All of	5	"	"	637.92
N. ½ of	7	"	"	312.60
All of	9	"	"	640
Brought forward				19,054.47
Lot number 2, S. ½ of N. E. ¼, N.W. ¼ of N. E. ¼, & S. ½	21	15	10	463.50
S. E. ¼ of N. E. ¼, W. ½ of S. E. ¼, & S.W. ¼	23	"	"	280
Lots numbered 3 & 4 and S. E. ¼ of N. E. ¼	25	"	"	122.50
S. W. ¼ and N. ½	27	"	"	480
All of	29	"	"	640
S. ½ of	31	"	"	315.61
N. W. ¼	33	"	"	160
E. ½ of N.W. ¼	35	"	"	80
All of	1	16	10	658.28
All of	3	"	"	636.60
Brought forward				30,511.28
All of	29	16	10	640
All of	31	"	"	622.88
All of	33	"	"	640
All of	35	"	"	640
All of	1	14	11	640.64
All of	3	"	"	640.38
All of	5	"	"	638.56
All of	7	"	"	631.20
All of	9	"	"	640
All of	11	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	632.56
All of	29	"	"	640
Brought forward				43,986.52
S. ½ of N. E. ¼, N. W. ¼, & S. ½	23	15	11	560
S.W. ¼ & N. ½	25	"	"	480
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	628.38
All of	33	"	"	640
All of	35	"	"	640
All of	1	16	11	634.28
All of	3	"	"	634.60
All of	5	"	"	636.32
Lots No. 1, 2, 3, 5, & 6, S. E. ¼ of N. E. ¼, & S. E. ¼ of S.W. ¼	7	"	"	299.60
All of	9	"	"	640

Parts of section.	S.	T.	R.	Acres.
All of	11	15	10	640
Lots numbered 1, 2, 3, 4, 9, & 10, S. E. ¼ of S.W. ¼, & N.W. ¼ of N.W. ¼	13	"	"	284.60
N. ½ of N. E. ¼, S.W. ¼ of N. E. ¼, E. ½ of N. W. ¼, N. W. ¼ of N. W. ¼, S. E. ¼ of S. E. ¼, & S.W. ¼ of S.W. ¼	15	"	"	320
Lots numbered 2, 5, 6, 7, & 8	17	"	"	205.60
S. ½ of N. E. ¼, S. ½ of N.W. ¼, N.W. ¼ of N. W. ¼, & S. ½	19	"	"	508.22
Forward				19,054.47
All of	5	16	10	634.04
All of	7	"	"	621.50
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	622.78
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
Forward				30,511.28
S. E. ¼ & N. ½ of	1	15	11	479
Lots numbered 3, 4, 5, 6, 8, & 9	3	"	"	218.24
N. W. ¼	5	"	"	159.78
All of	7	"	"	625.92
S. ½ of N.W. ¼ & S. ½ of N. W. ¼ of S. E. ¼, N. E. ¼ of S. W. ¼, and lot No. 2	9	"	"	400
All of	11	"	"	117.80
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	627.60
All of	21	"	"	640
Forward				43,986.52
All of	11	16	11	640
All of	13	"	"	640
All of	15	"	"	640
N.E. ¼, N E. ¼ of N.W. ¼, and lots No. 5 & 6	17	"	"	274.70
S. ½ of	19	"	"	311.80
S.E. ¼, N. ½ of S.W. ¼, S. E. ¼ of S.W. ¼, & N. ½	21	"	"	600
All of	23	"	"	640
All of	25	"	"	640
N. ½ of N.W. ¼, S.E. ¼ of N. W. ¼, N. E. ¼ of S. W. ¼, lot No. 2, & E. ½	27	"	"	528
Forward				55,876.20

383 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward				55,876.20
S. ½ of	29	16	11	320
All of	31	"	"	622.64
S. E. ¼	33	"	"	160
N. W. ¼, N. E. ¼ of S. W. ¼, & E. ½	35	"	"	520
N. ½ of	3	13	12	320.16
All of	5	"	"	640.06
N. ½ of	7	"	"	318
N. W. ¼	9	"	"	160
All of	1	14	12	639
All of	3	"	"	639.12
N. E. ¼, E. ½ of S. E. ¼, S. ½ of S. W. ¼, E. ½ of N. W. ¼, & N. W. ¼ of N. W. ¼	5	"	"	428.96
All of	7	"	"	630.48
Brought forward				66,877.00
All of	31	14	12	635.63
All of	33	"	"	640
All of	35	"	"	640
All of	1	15	12	640.18
All of	3	"	"	639.68
All of	5	"	"	639.04
All of	7	"	"	625.76
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	627.74
All of	21	"	"	640
Brought forward				81,841.44
All of	9	16	12	640
All of	11	"	"	640
W. ½ of N. E. ¼, S. E. ¼ of N. E. ¼, N. W. ¼, & S. ½	13	"	"	600
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	626.78
All of	21	"	"	640
All of	23	"	"	640
N. ½ of	9	14	12	320
N. ½ of S. E. ¼, & W. ½ of S. W. ¼	9	"	"	160
All of	11	"	"	640
All of	13	"	"	640
N. E. ¼, N. E. ¼ of N. W. ¼, E. ½ of S. W. ¼, & S. W. ¼ of S. W. ¼	15	"	"	320
All of	17	"	"	640
All of	19	"	"	632.38
All of	21	"	"	640
S. ½ of	25	"	"	320
All of	27	"	"	640
All of	29	"	"	640
Forward				66,877
All of	25	15	12	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	629.60
All of	33	"	"	640
All of	35	"	"	640
Lots numbered 1, 2, 3, 4, 5, 6, & 7, & S. E. ¼ of N. E. ¼	1	16	12	313.60
All of	3	"	"	635.86
All of	5	"	"	635.74
All of	7	"	"	624.56
Forward				81,841.44
All of	25	16	12	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	624.16
All of	33	"	"	640
All of	35	"	"	640
All of	23	15	12	640
Total acres in Howard Co				91,375.38

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Greeley County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
All of	1	17	9	638.34
All of	3	"	"	642.34
All of	5	"	"	641.92
All of	7	"	"	640.88
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	640.32
All of	21	"	"	640
All of	23	"	"	640
All of	25	17	9	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	639.90
All of	33	"	"	640
All of	35	"	"	640
All of	1	18	9	642.18
All of	3	"	"	642
All of	5	"	"	629.42
All of	7	"	"	627.74
Forward				14,072.04

384 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				14,072.04
All of	9	18	9	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	628.96
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	637.44
All of	33	"	"	640
All of	35	"	"	640
All of	1	19	9	643.52
All of	3	"	"	639.52
All of	5	"	"	639.10
All of	7	"	"	625.92
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	628.32
All of	21	"	"	640
Forward				30,034.72

Parts of section.	S.	T.	R.	Acres.
Bro't forward				30,034.72
All of	23	19	9	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	625.44
All of	33	"	"	640
All of	35	"	"	640
All of	1	20	9	645.42
All of	3	"	"	646.86
All of	5	"	"	649.22
All of	7	"	"	627.60
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	640
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	626.72
All of	33	"	"	640
All of	35	"	"	640
Forward				45,999.82

Parts of section.	S.	T.	R.	Acres.
Bro't forward				45,999.82
All of	1	17	10	645.08
All of	3	"	"	639.34
All of	5	"	"	638.44
All of	7	"	"	633.28
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	639.58
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	17	10	640
All of	29	"	"	640
All of	31	"	"	641.18
All of	33	"	"	640
All of	35	"	"	640
All of	1	18	10	636.56
All of	3	"	"	640.66
All of	5	"	"	641.98
All of	7	"	"	633.02
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
Forward				61,988.04

Parts of section.	S.	T.	R.	Acres.
Bro't forward				61,988.04
All of	15	18	10	640
All of	17	"	"	640
All of	19	"	"	626.78
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	634.58
All of	33	"	"	640
All of	35	"	"	640
All of	1	19	10	642.62
All of	3	"	"	643.76
All of	5	19	10	637.20
All of	7	"	"	628.18
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	630.40
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
Forward				77,751.56

Parts of section.	S.	T.	R.	Acres.
Bro't forward				77,751.56
All of	29	19	10	640
All of	31	"	"	637.34
All of	33	"	"	640
All of	35	"	"	640
All of	1	20	10	651.22
All of	3	"	"	648.18
All of	5	"	"	639.68
All of	7	"	"	626.40
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	20	10	614.78
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	614.72
All of	33	"	"	640
All of	35	"	"	640
All of	1	17	11	642.60
All of	3	"	"	642.16
All of	5	"	"	642.02
Forward				93,710.66

385 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				93,710.66
All of	7	17	11	639.20
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	642.40
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
N. E. ¼, N. W. ¼ of S. E. ¼, N. ½ of S. W. ¼, & S. W. ¼ of S. W. ¼	31	"	"	320.09

Parts of section.	S.	T.	R.	Acres.
Bro't forward				108,742.49
All of	19	18	11	635.12
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	634.58
All of	33	"	"	640
All of	35	"	"	640
All of	1	19	11	637.84
All of	3	"	"	635.44
All of	5	"	"	634.96
All of	7	"	"	626.58
All of	9	19	11	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	624.70
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	625.68
Forward				124,677.39

Parts of section.	S.	T.	R.	Acres.
Bro't forward				124,677.39
All of	33	19	11	640
All of	35	"	"	640
All of	1	20	11	644
All of	3	"	"	641.26
All of	5	"	"	640.72
All of	7	"	"	637.84
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	625.78
All of	21	"	"	640
All of	23	"	"	640
All of	25	20	11	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	640
All of	33	"	"	626.32
All of	35	"	"	640.00
All of	1	17	12	636.48
All of	3	"	"	633.12
N. E. ¼, E. ½ of S. E. ¼, lots Nos. 4, 5, 6, 8, & 9, S. W. ½ of S. W. ¼, W. ½ of N. E. ¼, S. E. ¼ of N. E. ¼, N. W. ¼ & S. ½	5	"	"	453.66
	7	"	"	598.66
Forward				139,775.23

Parts of section.	S.	T.	R.	Acres.
Bro't forward				139,775.23
N. ½ of S. E. ¼, lots 1 & 2, & N. ½	9	17	12	447.70
All of	11	"	"	640
All of	13	"	"	640
S. E. ¼	15	"	"	160
All of	17	"	"	640
All of	19	"	"	647.12
All of	21	"	"	596.80
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	576.10
All of	29	"	"	640
All of	31	"	"	640.38
S. E. ¼ of S. E. ¼, N. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, & N. ½	33	"	"	480
All of	35	17	12	571.40
All of	1	18	12	640.38
All of	3	"	"	639.80
All of	5	"	"	641.32
All of	7	"	"	636.24
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
N. ¼ of N. E. ¼, S. E. ¼ of N. E. ¼, S. E. ¼ of S. E. ¼, & S. W. ¼ of S. W. ¼	19	"	"	199.70
Forward				153,692.17

386 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Bro't forward				153,692.17
N. ½ of N. W. ¼	19	18	12	79.67
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
E. ½ of S. W. ¼, E. ½ of N. W. ¼, N. W. ¼ of N. W. ¼ & E. ½	29	"	"	520
Lots 2 & 3, W. ½ of N. E. ¼, N. W. ¼ of S. E. ¼, & W. ½	31	"	"	497.48
All of	33	"	"	640
All of	35	"	"	640
All of	1	19	12	636.38
All of	3	"	"	637.60

Parts of section.	S.	T.	R.	Acres.
All of	5	19	12	637.12
All of	7	"	"	630.08
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	628.80
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
Forward				167,559.30

Parts of section.	S.	T.	R.	Acres.
Bro't forward				167,559.30
All of	29	19	12	640
All of	31	"	"	631.44
All of	33	"	"	640
All of	35	"	"	640
All of	1	20	12	623.30
All of	3	"	"	620.98
All of	5	"	"	613.76
All of	7	"	"	615.84
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640

Parts of section.	S.	T.	R.	Acres.
All of	17	20	12	640
All of	19	"	"	621.10
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	626.24
All of	33	"	"	640
All of	35	"	"	640
Total acres in Greeley Co				181,511.96

EXHIBIT H.

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Valley County, Nebraska.

Parts of section.	S.	T.	R.	Acres.
All of	1	17	13	634.24
All of	3	"	"	632.16
All of	5	"	"	638.42
All of	7	"	"	646.90
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	648.70
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640

Parts of section.	S.	T.	R.	Acres.
All of	27	17	13	640
All of	29	"	"	640
All of	31	"	"	643.84
All of	33	"	"	640
All of	35	"	"	640
All of	1	18	13	618.67
All of	3	"	"	640.52
All of	5	"	"	642.72
All of	7	"	"	631.06
All of	9	"	"	640
All of	11	"	"	601.31
Forward				15,338.94

Parts of section.	S.	T.	R.	Acres.
Brought forward				15,338.94
E. ½ of N. E. ¼, N. W. ¼ of N. E. ¼, S. W. ¼ of N. W. ¼, W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼, and lots 1, 5, 6, 7 & 8	13	18	13	446.60
All of	25	"	"	640
All of	17	"	"	640
All of	19	"	"	633.74
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	632.20
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	636.08
All of	33	"	"	640
All of	35	"	"	640

Parts of section.	S.	T.	R.	Acres.
All of	1	19	13	639.20
All of	3	"	"	640.44
All of	5	"	"	641.20
All of	7	"	"	628.32
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	630.48
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	554.40
All of	29	"	"	636.60
Forward				32,298.90

387 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd.

Parts of section.	S.	T.	R.	Acres.
Brought forward				32,298.90
All of	31	19	13	601.30
All of	33	"	"	625.30
All of	35	"	"	556.90
All of	1	20	13	621.04
All of	3	"	"	606.76
All of	5	"	"	604.28
All of	7	"	"	614.21
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	620.28
All of	21	"	"	640
All of	23	"	"	640
All of	25	20	13	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	622.04
All of	33	"	"	640
All of	35	"	"	640
All of	1	17	14	643.58
All of	3	"	"	651.14
All of	5	"	"	647.44
All of	7	"	"	646.38
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
Forward				49,959.55

Parts of section.	S.	T.	R.	Acres.
Brought forward				49,959.55
All of	15	17	14	640
All of	17	"	"	640
All of	19	"	"	645.93
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	641.14
All of	33	"	"	640
All of	35	"	"	640
All of	1	18	14	639.72
All of	3	"	"	645.62
All of	5	"	"	642.90
All of	7	"	"	634.40
All of	9	18	14	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	636.54
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	634.16
All of	33	"	"	640
All of	35	"	"	640
Forward				68,520.31

Parts of section.	S.	T.	R.	Acres.
Brought forward				68,520.31
All of	1	19	14	636.92
All of	3	"	"	635.16
All of	5	"	"	576.74
All of	7	"	"	632.64
All of	9	"	"	562.40
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	592.50
All of	17	"	"	640
All of	19	"	"	611.36
All of	21	"	"	638.94
All of	23	"	"	629.89
All of	25	"	"	552.90
All of	27	"	"	635.60
All of	29	"	"	640
All of	31	19	14	636.64
All of	33	"	"	640
All of	35	"	"	640
All of	1	20	14	610.62
All of	3	"	"	606.82
All of	5	"	"	612.12
All of	7	"	"	627.20
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	"	"	640
All of	17	"	"	640
All of	19	"	"	601.20
Forward				85,992.96

Parts of section.	S.	T.	R.	Acres.
Brought forward				85,992.96
All of	21	20	14	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	608.80
All of	31	"	"	630.72
All of	33	"	"	640
All of	35	"	"	640
All of	1	17	15	639.26
All of	3	"	"	638.78
All of	5	"	"	639.80
All of	7	"	"	639.20
All of	9	"	"	640
All of	11	"	"	640
All of	13	"	"	640
All of	15	17	15	640
All of	17	"	"	640
All of	19	"	"	638.40
All of	21	"	"	640
All of	23	"	"	640
All of	25	"	"	640
All of	27	"	"	640
All of	29	"	"	640
All of	31	"	"	639.14
All of	33	"	"	640
All of	35	"	"	640
All of	1	18	15	639.84
All of	3	"	"	738.06
All of	5	"	"	638.28
Forward				104,505.24

388 *Lands Patented to the Burlington and Missouri River Railroad Co., &c.*—Cont'd

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
Brought forward ...	.....	.....	.....	122,379.86	All of.....	1	19	15	639.86
All of.....	7	18	15	630.08	All of.....	3	"	"	736.20
All of.....	9	"	"	640	All of.....	5	"	"	637.36
All of.....	11	"	"	640	All of.....	7	"	"	627.42
All of.....	13	"	"	640	All of.....	9	"	"	640
All of.....	15	"	"	640	All of.....	11	"	"	640
All of.....	17	"	"	640	All of.....	13	"	"	640
All of.....	19	"	"	636.22	All of.....	15	"	"	640
All of.....	21	"	"	640	All of.....	17	"	"	640
All of.....	23	"	"	640	All of.....	19	"	"	626.94
All of.....	25	"	"	640	All of.....	21	"	"	640
All of.....	27	"	"	640	All of.....	23	"	"	640
All of.....	29	"	"	640	All of.....	25	"	"	640
All of.....	31	"	"	640.54					
All of.....	33	"	"	640	Forward.....	.....	.....	.....	140,254.48
All of.....	35	"	"	640					

Brought forward ...	.....	.....	.....	140,254 48	All of.....	29	20	15	640
All of.....	27	19	15	640	All of.....	31	"	"	634.82
All of.....	29	"	"	640	All of.....	33	"	"	640
All of.....	31	"	"	624.26	All of.....	35	"	"	640
All of.....	33	"	"	640	E. ½ of.....	1	17	16	319.77
All of.....	35	"	"	640	E. ½ of.....	13	"	"	320
All of.....	1	20	15	607.82	E. ½ of.....	25	"	"	320
All of.....	3	"	"	613.96	E. ½ of.....	1	18	16	320.02
All of.....	5	"	"	549.49	E. ½ of.....	13	"	"	320
All of.....	7	"	"	627.98	E. ½ of.....	25	"	"	320
All of.....	9	"	"	543.50	Brought forward..	.....	.....	.....	156,477.70
All of.....	11	"	"	640	E. ½ of.....	1	19	16	319.80
All of.....	13	"	"	640	E. ½ of.....	13	"	"	320
All of.....	15	"	"	561	E. ½ of.....	25	"	"	320
All of.....	17	"	"	640	E. ½ of.....	1	20	16	318.22
All of.....	19	"	"	632.80	E. ½ of.....	13	20	16	320
All of.....	21	"	"	640	E. ½ of.....	25	"	"	320
All of.....	23	"	"	587.80					
All of.....	25	"	"	640	Total acres in				
All of.....	27	"	"	640	Valley Co.....	.....	.....	.....	158,395.72

Lands Patented to the Burlington and Missouri River Railroad Company in Nebraska in Buffalo County, Nebraska.

Parts of section.	S.	T.	R.	Acres.	Parts of section.	S.	T.	R.	Acres.
N. ½ of N. E. ¼ & N. ½ of N. W. ¼	1	12	15	178.45	E. ½ of.....	1	12	16	322.08
All of.....	3	"	"	660.82	Total acres in				
All of.....	5	"	"	656.24	Buffalo county...	.....	.....	.....	2,430.67
All of.....	7	"	"	613.08					

EXHIBIT K.

Part of section.	S.	T.	R.	Acres.	Part of section.	S.	T.	R.	Acres.
N. ½.....	23	14	6 E.	320	All.....	11	13	7	640
N. ½ S. E.....	"	"	"	80	All.....	13	"	"	640
N. ½ S. W.....	"	"	"	80	N. ½ N. E.....	15	"	"	80
N. ½ N. E.....	25	"	"	60	All.....	1	14	"	623.04
S. E. N. E.....	"	"	"	60	All.....	3	"	"	605.52
All.....	1	13	7	651.60	All.....	5	"	"	603.92
All.....	3	"	"	657.44	All.....	9	"	"	640
N. ½ N. E & S. E. N. E..	5	"	"	127.33	All.....	11	"	"	640
N. E. N. W.....	"	"	"	43.54	All.....	13	"	"	640
N. E. S. E.....	"	"	"	40	All.....	15	"	"	640
N. ½ N. E.....	9	"	"	80	All.....	17	"	"	640
N. E. N. W.....	9	"	"	40	All.....	19	"	"	603.12

EXHIBIT K—Continued.

Part of section.	S.	T.	R.	Acres.	Part of section.	S.	T.	R.	Acres.
All	21	14	7	640	S. W. ¼ and	19	13	9	237.02
All	23	"	"	640	S. ½ N. W	19	"	"	
All	25	"	"	640	N. W	21	"	"	160
All	27	"	"	640	N. ½ S. W. and	21	"	"	60
All	29	"	"	640	S. W. S. W	21	"	"	60
N. ½ N. E	31	"	"	60	N. E. S. E	23	"	"	40
S. E. N. E	31	"	"	60	N. W	27	"	"	160
N. E. S. E	31	14	7 E.	40	All	29	"	"	640
N. E. N. W	31	"	"	40	All	31	"	"	639.36
All	33	"	"	640	All	33	"	"	640
All	35	"	"	640	W. ½	17	14	9	320
All	13	15	7	640	E. ½	19	"	"	320
All	23	"	"	640	All	21	"	"	640
All	25	"	"	640	All	27	"	"	640
All	27	"	"	640	All	29	"	"	640
All	33	"	"	640	All	31	"	"	633.96
All	35	"	"	640	All	33	"	"	640
389 All	1	13	8	641.28	All	35	"	"	640
All	3	"	"	655.96	E. ½ N. W	7	12	10 E.	80
All	5	"	"	666.12	N. W. N. W	7	"	"	30.24
All	7	"	"	122.96	E. ½ S. W	7	"	"	80
All	9	"	"	640	W. ½ N. W	17	"	"	80
All	11	"	"	640	N. ½	19	"	"	301.95
All	13	"	"	640	S. W	23	"	"	160
All	15	"	"	640	S. ½ S. W	25	"	"	80
All	17	"	"	640	S. W. S. E	25	"	"	40
All	19	"	"	137.96	N. E	27	"	"	160
All	21	"	"	640	N. ½ N. E	35	"	"	80
All	23	"	"	640	Lots Nos. 3, 4, 5, & 6	5	13	"	135.34
All	25	"	"	640	Lots Nos. 1 & 7	5	"	"	53.20
All	27	"	"	640	N. ½	7	"	"	320
N. E. ¼ & N. ½ S. E	29	"	"	240	S. E. & E. ½ S. W	7	13	10	239
N. E. S. W	29	"	"	40	All	9	"	"	640
E. ½ N. W	29	"	"	60	E. ½ S. W	15	"	"	80
N. W. N. W	29	"	"	60	S. W. S. W	15	"	"	40
N. ½ N. E	33	"	"	60	E. ½	17	"	"	320
S. E. N. E	33	"	"	60	Lots Nos. 2, 3, 4, 5, 6, 7, & 8	19	"	"	269.80
N. ½ N. W	33	"	"	80	E. ½ S. E	29	"	"	80
All	35	13	8 E.	640	Lots Nos. 1, 3, 4, & 5	29	"	"	163.90
All	3	14	"	616.44	N. E	31	"	"	160
All	5	"	"	613.36	N. ½ N. E	31	14	"	80
All	7	"	"	86.64	S. W. N. E	31	"	"	40
All	9	"	"	640	W. ½ S. E	31	"	"	80
All	11	"	"	640	W. ½	31	"	"	307
All	13	"	"	640	E. ½ N. W	3	11	11	79.82
All	15	"	"	640	W. ½ S. E	3	"	"	80
All	17		"	640	S. E. S. E	3	"	"	40
All	19		"	111.36	S. ½ S. E	19	"	"	80
All	21		"	640	S. E. S. W	19	12	11 E.	40
All	23		"	640	Lots 3, 4, 5, & 6	19	"	"	192.50
All	25	"	"	640	S. W	21	"	"	160
All	27	"	"	640	S. E. N. W	23	"	"	40
All	29	"	"	640	N. W. S. E	23	"	"	40
All	31	"	"	133.44	S. E. S. W	33	"	"	40
All	33	"	"	640	Not No. 7	1	"	"	42.60
All	35	"	"	640	N. E. N. E	9	"	"	40
All	19	15	"	97.28	Lots Nos. 1, 2, & 4	11	"	"	139.60
All	29	"	"	640	Lots Nos. 1 & 2	15	"	"	84.40
All	31	"	"	108.08	N. W. N. W	17	"	"	40
All	33	"	"	640	S. W. S. E	17	"	"	40
E. ½ N. E	1	12	9	87.49	S. E. S. W	17	"	"	40
N. W. N. E	3	"	"	47 90	S. E. N. E	25	13	"	40
E. ½ S. E	3	"	"	80	N. W. N. E	27	"	"	40
N. W	3	"	"	175.36	S. E. N. W	27	"	"	40
All	5	"	"	644.69	W. ½ N. W	7	12	12	70.24
N. ½	7	"	"	325.43	N. W. S. E	19	12	"	40
S. E	11	"	"	160	S. E. N. W	29	"	"	40
S. ½	13	"	"	320	N. E. N. W	31	"	"	40
All	1	13	9	638.72	Lots Nos. 7 & 8	27	13	"	58
N. E. N. E	3	"	"	40.08	Lots Nos. 4 & 5	33	"	"	60.61
N. E. S. E	3	"	"	40	N. W. S. W	33	"	"	40
W. ½ N. W	3	"	"	78.92	S. E. S. W	29	"	"	40
All	5	"	"	635.84	N. W. N. W	29	"	"	40
All	7	"	"	634.48	N. ½	29	"	1 W.	320
All	9	"	"	640	N. ½ S. E. & N. ½ S. W.	29	"	"	160
E. ½	11	"	"	320	N. ½ N. E	31	"	"	80
N. ½ N. E. and	13	"	"	80	N. ½ N. W	31	"	"	121.50
N. ½ N. W	13	"	"	80	S. W. N. W	31	"	"	
All	17	"	"	640	N. W. S. W	31	"	"	40.37
E. ½	19	"	"	320					

EXHIBIT K—Continued.

Part of section.	S.	T.	R.	Acres.
N. ½	19	12	2 W.	322.67
All	17	"	"	640
All	9	"	"	640
All	7	"	"	642
All	5	"	"	661
All	3	"	"	673.88
W. ½ N. W.	1	"	"	89.90
All	19	13	"	641.72
All	21	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	641.40
390 All	33	"	"	640
All	35	"	"	610
All	5	11	3 W.	639.04
All	7	"	"	638.52
All	1	12	"	663.24
All	3	"	"	649.89
All	5	"	"	649.44
All	7	"	"	627.64
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	630.64
All	21	"	"	640
All	23	"	"	640
N. ½	25	"	"	320
All	27	"	"	640
All	29	12	3 W.	640
All	31	"	"	630.72
All	33	"	"	640
N. ½ N. E.	35	"	"	80
N. ½ N. W.	35	"	"	80
All	19	"	"	622.63
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	635.23
All	33	"	"	640
All	35	"	"	640
W. ½	5	10	4 W.	319.36
All	1	11	"	640.96
All	3	"	"	640.80
All	5	"	"	640.56
All	7	"	"	623.16
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	623.84
All	21	"	"	640
All	23	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	626.20
W. ½	33	11	4 W.	320
All	1	12	"	645.44
All	3	"	"	647.62
All	5	"	"	649.36
All	7	"	"	618
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	619.28
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	620.76
All	33	"	"	640
All	35	"	"	640
E. ½	23	13	"	320
All	25	"	"	640

Part of section.	S.	T.	R.	Acres.
All	27	13	4 W.	640
All	33	"	"	640
All	35	"	"	640
All	1	10	5	639.44
All	3	"	"	638.72
All	5	"	"	640.96
All	7	"	"	635.76
All	9	"	"	640
All	11	"	"	640
All	15	"	"	640
All	17	10	5 W.	640
All	19	"	"	637.88
All	21	"	"	640
W. ½ N. W.	27	"	"	80
N. ½	29	"	"	320
W. ½ S. W.	29	"	"	80
N. ½	31	"	"	319.33
N. ½ S. E. and	31	"	"	159.73
N. ½ S. W.	31	"	"	
All	1	11	"	639.44
All	3	"	"	639.28
All	5	"	"	639.72
All	7	"	"	630.96
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	630.64
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	632
All	33	"	"	640
All	35	"	"	640
All	13	12	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
S. ½	29	12	5 W.	320
S. ½	31	"	"	314.58
All	33	"	"	640
All	35	"	"	640
N. ½	1	9	6 W.	319.48
W. ½ S. W.	1	"	"	80
All	3	"	"	639.60
All	5	"	"	639.24
All	7	"	"	635.56
All	9	"	"	640
N. ½	11	"	"	320
N. W.	15	"	"	160
All	17	"	"	640
All	19	"	"	636.84
N. W.	21	"	"	160
All	1	10	6 W.	640.40
All	3	"	"	640.36
All	5	"	"	640.12
All	7	"	"	628.56
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	633.16
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	10	6 W.	634.68
All	33	"	"	640
All	35	"	"	640
S. ½	1	11	"	320
S. ½ N. E.	1	"	"	80
S. ½ N. W.	1	"	"	80
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	21	"	"	640

EXHIBIT K—Continued.

Part of section.	S.	T.	R.	Acres.
All	23	11	6 W.	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	627.84
All	33	"	"	640
All	35	"	"	640
N. ½	3	8	7 W.	318.50
391 All	5	"	"	637.94
N. ½	7	"	"	304.98
All	1	9	"	640.20
All	3	"	"	639.76
All	5	"	"	640.84
All	7	"	"	636.12
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	637.36
All	21	9	7 W.	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	639
All	33	"	"	640
N. ½	35	"	"	320
All	1	10	"	640.40
S. ½ N. E. & S. E.	3	"	"	240
E. ½ S. W.	3	"	"	120
S. W. S. W.	3	"	"	
S. E. N. W.	3	"	"	40
E. ½	9	"	"	320
S. W. & E. ½ N. W.	9	"	"	240
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
E. ½ & S. W.	17	"	"	480
E. ½ N. W.	17	"	"	60
S. W. N. W.	17	"	"	60
All	19	"	"	627.48
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	628.64
All	33	"	"	640
All	35	"	"	640
S. ½ S. E.	27	11	"	80
S. ½ S. W.	25	11	7 W.	80
S. ½	35	"	"	320
All	1	8	8	637.99
All	3	"	"	638.32
All	5	"	"	638.84
All	7	"	"	596.60
All	9	"	"	640
All	11	"	"	640
N ½	13	"	"	320
All	15	"	"	640
All	17	"	"	640
All	19	"	"	597.63
N. ½	21	"	"	320
N. ½	29	"	"	320
All	1	9	"	640.48
All	3	"	"	640.64
All	5	"	"	639.60
All	7	"	"	628
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	630.28
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	630.40

Part of section.	S.	T.	R.	Acres.
All	33	9	8	640
All	35	9	8 W.	640
S. E. & E. ½ S. W.	23	10	"	240
All	25	"	"	640
E. ½ S. W. and	27	"	"	60
S. W. S. W.	27	"	"	60
S. ½ N. E. & S. E.	27	"	"	240
S. E. N. W.	27	"	"	40
S. ½ S. E. and.	31	"	"	156.68
S. ½ S. W.	31	"	"	
All	33	"	"	640
All	35	"	"	640
N. ½	3	7	9	320.60
All	5	"	"	639.40
E. ½	7	"	"	302
All	1	8	"	636.32
All	3	"	"	631.49
All	5	"	"	628 98
All	7	"	"	279.28
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	288
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	287.24
All	33	8	9 W.	640
N. ½	35	"	"	320
S. ½ N. E.	1	9	9	80
S. ½ N. W.	1	"	"	80
S. ½	1	"	"	320
S. E.	9	"	"	160
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
S ½ N. E. & S. E.	17	"	"	240
E. ½ S. W. and	17	"	"	80
S. W. S. W.	17	"	"	40
S. E. N. W	17	"	"	40
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	7	10	633.68
All	3	"	"	636.60
All	5	"	"	636
All	7	"	"	646
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	637.84
N. ½	21	7	10 W.	320
N. S. E. and	21	"	"	80
N. ½ S. W	21	"	"	80
All	1	8	"	628.36
All	3	"	"	630.64
All	5	"	"	629.46
All	7	"	"	654.24
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	654.24
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	651.44
All	33	"	"	640

SCHEDULE K—Continued.

Part of section.	S.	T.	R.	Acres.
All	35	8	10 W.	640
S. ½ S. E. and	23	9	"	80
S. ½ S. W.	23	"	"	80
All	25	"	"	640
392 S. ½	27	"	"	320
S. ½ N. E.	31	"	"	160.17
S. ½ N. W.	31	"	"	
S. ½	31	"	"	320.14
All	33	"	"	640
All	35	"	"	640
All	1	7	11 W.	638.32
All	3	"	"	636.76
All	5	"	"	636.56
All	7	"	"	602.64
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	607.20
All	21	"	"	640
All	23	"	"	640
N. ½	25	"	"	320
All	27	"	"	640
All	29	"	"	640
All	31	"	"	616.12
All	33	"	"	640
N. ½ N. E. and	35	"	"	80
N. ½ N. W.	35	"	"	80
N ½ N. E. and	1	8	"	80
S. ½ N. W.	1	"	"	80
S. ½	1	"	"	320
S. ½	3	"	"	320
S. ½	7	"	"	300.58
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	600.24
All	21	"	"	640
All	23	8	11 W.	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	600.16
All	33	"	"	640
All	35	"	"	640
N. ½	1	6	12	318.24
N. ½ S. E.	1	6	12	80
N. ½ S.W.	1	"	"	80
All	3	"	"	636.86
All	5	"	"	639.04
All	7	"	"	633.92
All	9	"	"	640
N. ½	11	"	"	320
N. ½	17	"	"	320
All	1	7	"	640.96
All	3	"	"	642.64
All	5	"	"	641.20
All	7	"	"	634.84
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	634.04
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	7	12	640
All	31	"	"	633.40
All	33	"	"	640
All	35	"	"	640
S. ½ N. E.	13	8	12	80
S. ½ N. W.	13	"	"	80
S. ½	13	"	"	320
S. ½ S. E.	19	"	"	80
S. ½ S. W.	19	"	"	80
All	21	"	"	640
All	23	8	12	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	6	13	649.01
All	3	"	"	641.82
All	5	"	"	642.20
All	7	"	"	636.96
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	634.64
All	21	"	"	640
N. ½	23	"	"	320
N. ½	27	"	"	320
N. ½	29	6	13 W.	320
All	1	7	13	641.32
All	3	"	"	646.24
All	5	"	"	645.08
All	7	"	"	637.48
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	635.20
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	635.08
All	33	"	"	640
All	35	"	"	640
S. ½	25	8	13	320
S. ½	27	"	"	320
S. ½ N. E.	33	"	"	80
S. ½ N. W.	33	"	"	80
S. ½	33	"	"	320
All	35	"	"	640
N. ½	3	5	14	321.68
N ½	5	"	"	324.50
N. ½	7	"	"	322.66
All	1	6	"	645.21
All	3	"	"	648.10
All	5	"	"	639.76
All	7	6	14	644.24
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	644.87
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640.40
All	33	"	"	640
N. ½	35	"	"	320
E. ½	1	7	14	320
S. ½ S. W.	1	"	"	69.85
All	13	"	"	605.06
Lots 1 and 2	15	"	"	116.16
Lots 1 and 2	17	"	"	109.16
All	19	"	"	631.24
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640

393 SCHEDULE K—Continued.

Part of section.	S.	T.	R.	Acres.
All	1	5	15	640.16
All	3	"	"	641.64
All	5	"	"	637.12
All	7	"	"	641.84
All	9	"	"	640
N. ½	11	"	"	320
S. W. ¼	11	"	"	160
N. ½	17	"	"	320
All	1	6	15	641.24
All	3	"	"	641.88
All	5	"	"	642.36
All	7	"	"	626.56
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	632.96
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	639.60
All	33	"	"	640
All	35	"	"	640
Lots 1, 2, 3, & 4	13	7	15	101.40
S. ½ S. E. ¼	19	"	"	157.71
S. E. ¼ S. W. ¼	19	"	"	
S. ½ S. E. ¼	21	7	15	80
S. ½ S. W. ¼	21	"	"	80
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	630.64
All	33	"	"	640
All	35	"	"	640
E. ½	1	5	16	319.65
E. ½	13	"	"	320
E. ½	1	6	16	319.60
E. ½	13	"	"	320
E. ½	25	"	"	320
S. E. ¼	25	7	16	160
W. ½ N. E. ¼	5	12	10	155.89
W. ½ S. E. ¼	5	"	"	
W. ½	5	"	"	312
All	9	12	11	320
All	11	"	"	640
W. ½ N. E. ¼	15	"	"	80
W. ½ S. E. ¼	15	"	"	80
W. ½	15	"	"	320
All	17	"	"	640
All	19	12	11 W.	625.20
All	13	12	12	640
All	19	"	"	631.84
All	21	12	12	640
All	23	"	"	640
W. ½ N. E. ¼	25	"	"	80
W. ½ S. E. ¼	25	"	"	80
W. ½	25	"	"	320
All	27	"	"	640
All	29	"	"	640
All	31	"	"	639.68
All	33	"	"	640
N. W. ¼ N. E. ¼	35	13	10	40
N. ½ N. W. ¼	35	13	10	80
W. ½ N. E. ¼	1	11	13	159.44
W. ½ S. E. ¼	1	"	"	
W. ½	1	"	"	317.75
All	3	"	"	629.24
All	5	"	"	634.12
All	7	"	"	629.44
W. ½ N. E. ¼	9	"	"	80
W. ½ S. E. ¼	9	"	"	80
W. ½	9	"	"	320
All	25	12	13	640
All	27	"	"	640
All	31	"	"	631.84
All	33	"	"	640
All	35	"	"	640
All	1	11	14	638.60
All	3	"	"	635.28
All	5	"	"	638.80
All	7	11	14	630.76
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	630.68
All	21	"	"	640
All	7	11	15	632.68
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	647.28
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	653.80
All	33	"	"	640
E. ½	1	10	16	318.89
E. ½	13	11	16	320
E. ½	25	"	"	320
Total acres				375,660.83

EXHIBIT L.

Part of section.	S.	T.	R.	Acres.
North half	5	13	1 E.	323.60
W. ½ S. W. ¼	5	13	1 "	80
N. W. ¼	7	13	1 "	155.70
All	1	14	1 "	640
All	3	14	1 "	640
All	5	14	1 "	640
All	7	14	1 "	640
All	9	14	1 "	640
All	11	14	1 "	640
All	13	14	1 "	640
All	15	14	1 "	640
All	17	14	1 "	640
All	19	14	1 "	640
All	21	14	1 "	640
All	23	14	1 "	640
All	25	14	1 "	640
All	27	14	1 "	640
All	29	14	1 "	640
All	31	14	1 E.	640
All	33	14	1 "	640
N. ½ N. E.	35	14	1 "	80
N. ½ N. W.	35	14	1 "	80
S. ½ S. E.	9	15	1 "	80
S. ½ S. W.	9	15	1 "	80
394 S. ½	11	15	1 "	320
All	13	15	1 "	640
All	15	15	1 "	640
All	17	15	1 "	640
All	19	15	1 "	640
All	21	15	1 "	640
All	23	15	1 E.	640
All	25	15	1 "	640
All	27	15	1 "	640
All	29	15	1 "	640
All	31	15	1 "	640
All	33	15	1 "	640

EXHIBIT L—Continued.

Part of section.	S.	T.	R.	Acres.
All	35	15	1 E	640
All	1	14	2 "	640
All	3	14	2 "	640
All	5	14	2 "	640
All	7	14	2 "	640
All	9	14	2 "	640
All	11	14	2 "	640
All	13	14	2 "	640
All	15	14	2 "	640
All	17	14	2 "	640
All	19	14	2 "	640
All	21	14	2 "	640
All	23	14	2 "	640
N. ½	25	14	2 "	320
N. ½	27	14	2 "	320
N. ½ S. E. ¼	27	14	2 "	80
N. ½ S. W. ¼	27	14	2 "	80
All	29	14	2 "	640
S. ½ S. E. ¼	1	15	2 "	80
S. ½ S. W. ¼	1	15	2 "	80
S. ½ N. E. ¼	7	15	2 "	80
S. ½ N. W. ¼	7	15	2 "	80
S. ½	7	15	2 "	320
All	9	15	2 E	640
All	11	15	2 "	640
All	13	15	2 "	640
All	15	15	2 "	640
All	17	15	2 "	640
All	19	15	2 "	640
All	21	15	2 "	640
All	23	15	2 "	640
All	25	15	2 "	640
All	27	15	2 "	640
All	29	15	2 "	640
All	31	15	2 "	640
All	33	15	2 "	640
All	35	15	2 "	640
All	1	14	3 "	640
All	3	14	3 "	640
All	5	14	3 "	640
All	7	14	3 "	640
All	9	14	3 "	640
All	11	14	3 "	640
All	13	14	3 "	640
All	15	14	3 "	640
All	17	14	3 "	640
All	19	14	3 "	640
All	21	14	3 "	640
All	23	14	3 "	640
N. ½ N. E. ¼	29	14	3 "	80
N. ½ N. W. ¼	29	14	3 "	80
All	1	15	3 "	640
All	3	15	3 "	640
S. ½	5	15	3 "	320
All	7	15	3 E	640
All	9	15	3 "	640
All	11	15	3 "	640
All	13	15	3 "	640
All	15	15	3 "	640
All	17	15	3 "	640
All	19	15	3 "	640
All	21	15	3 "	640
All	23	15	3 "	640
All	25	15	3 "	640
All	27	15	3 "	640
All	29	15	3 "	640
All	31	15	3 "	640
All	33	15	3 "	640
All	35	15	3 "	640
All	1	14	4 "	640
All	3	14	4 "	640
All	5	14	4 "	640
All	7	14	4 "	640
All	9	14	4 "	640
All	11	14	4 "	640
All	13	14	4 "	640
All	15	14	4 "	640
All	17	14	4 "	640
All	19	14	4 "	640
N. ½	21	14	4 "	320
N. ½ S. E. ¼	21	14	4 "	80
N. ½ S. W. ¼	21	14	4 "	80

Part of section.	S.	T.	R.	Acres.
N. ½				320
All	1	15	4 E.	640
All	3	15	4 "	640
All	5	15	4 "	640
All	7	15	4 "	640
All	9	15	4 "	640
All	11	15	4 "	640
All	13	15	4 "	640
All	15	15	4 "	640
All	17	15	4 "	640
All	19	15	4 "	640
All	21	15	4 "	640
All	23	15	4 "	640
All	25	15	4 "	640
All	27	15	4 "	640
All	29	15	4 "	640
All	31	15	4 "	640
All	33	15	4 "	640
All	35	15	4 "	640
S. ½	35	16	4 "	320
All	1	14	5 "	640
All	3	14	5 "	640
All	5	14	5 "	640
All	7	14	5 "	640
All	9	14	5 "	640
All	11	14	5 "	640
All	13	14	5 "	640
All	15	14	5 "	640
All	17	14	5 "	640
N. ½ N. E. ¼	19	14	5 "	80
N. ½ N. W. ¼	19	14	5 "	80
N. ½ N. E. ¼	21	14	5 E.	80
N. ½ N. W. ¼	21	14	5 "	80
N. ½ N. E. ¼	23	14	5 "	80
N. ½ N. W. ¼	23	14	5 "	80
All	1	15	5 "	640
All	3	15	5 "	640
All	5	15	5 "	640
All	7	15	5 "	640
All	9	15	5 "	640
All	11	15	5 "	640
All	13	15	5 "	640
All	15	15	5 "	640
All	17	15	5 "	640
All	19	15	5 "	640
All	21	15	5 "	640
All	23	15	5 "	640
All	25	15	5 "	640
All	27	15	5 "	640
All	29	15	5 "	640
All	31	15	5 "	640
All	33	15	5 "	640
All	35	15	5 "	640
S. ½ N. E. ¼	31	16	5 "	80
S. ½ N. W. ¼	31	16	5 "	80
S. ½	31	16	5 "	320
S. ½ N. W. ¼	33	16	5 "	80
S. ½ N. E. ¼	33	16	5 "	80
S. ½	33	16	5 "	320
S. ½	35	16	5 "	320
All	1	14	6 E.	640
All	3	14	6 "	640
All	5	14	6 "	640
All	7	14	6 "	640
All	9	14	6 "	640
All	11	14	6 "	640
All	13	14	6 "	640
All	15	14	6 "	640
395 All	17	14	6 "	640
N. E. ¼	19	14	6 "	160
N. ½ N. W. ¼	19	14	6 "	80
N. ½	21	14	6 "	320
All	1	15	6 "	640
All	3	15	6 "	640
All	5	15	6 "	640
All	7	15	6 "	640
All	9	15	6 "	640
All	11	15	6 "	640
All	13	15	6 "	640
All	15	15	6 "	640
All	17	15	6 "	640
All	19	15	6 "	640

EXHIBIT L—Continued.

Part of section.	S.	T.	R.	Acres.
All	21	15	6 E.	640
All	23	15	6 "	640
All	25	15	6 "	640
All	27	15	6 "	640
All	29	15	6 "	640
All	31	15	6 "	640
All	33	15	6 "	640
All	35	15	6 "	640
S. ½	31	16	6 "	320
S. ½ S. E. ¼	33	16	6 "	80
S. ½ S. W. ¼	33	16	6 "	80
S. W. ¼ S. E. ¼	35	16	6 "	40
S. ½ S. W. ¼	35	16	6 "	80
All	7	14	7 "	640
S. W. ¼ S. E. ¼	1	15	7 "	40
S. ½ S. W. ¼	1	15	7 "	80
S. ½ N. E. ¼	3	15	7 "	80
S. ½ N. W. ¼	3	15	7 "	80
S. ½	3	15	7 "	320
N. W. ¼ N. E. ¼	5	15	7 "	40
S. ½ N. E.	5	15	7 "	80
S. ½	5	15	7 "	320
N. W. ¼	5	15	7 "	160
All	7	15	7 "	640
All	9	15	7 "	640
All	11	15	7 "	640
All	15	15	7 "	640
All	17	15	7 "	640
All	19	15	7 "	640
All	21	15	7 "	640
All	29	15	7 "	640
All	31	15	7 "	640
All	1	13	1 W.	640
All	3	13	1 "	640
All	5	13	1 "	640
All	7	13	1 "	640
All	9	13	1 "	640
All	11	13	1 "	640
All	15	13	1 W.	640
All	17	13	1 "	640
All	19	13	1 "	640
N. ½	21	13	1 "	320
N. ½ S. W. ¼	21	13	1 "	80
All	1	14	1 "	640
All	3	14	1 "	640
All	5	14	1 "	640
All	7	14	1 "	640
All	9	14	1 "	640
All	11	14	1 "	640
All	13	14	1 "	640
All	15	14	1 "	640
All	17	14	1 "	640
All	19	14	1 "	640
All	21	14	1 "	640
All	23	14	1 "	640
All	25	14	1 "	640

Part of section.	S.	T.	R.	Acres.
All	27	14	1 W.	640
All	29	14	1 "	640
All	31	14	1 "	640
All	33	14	1 "	640
All	35	14	1 "	640
S. ½ N. E. ¼	23	15	1 "	80
S. E. ¼	23	15	1 "	160
E. ½ S. W. ¼	23	15	1 "	80
S. W. ¼ S. W. ¼	23	15	1 "	40
S. E. ¼ N. W. ¼	23	15	1 "	40
All	25	15	1 "	640
All	27	15	1 "	640
S. ½	29	15	1 W.	320
S. ½	31	15	1 "	320
All	33	15	1 "	640
All	35	15	1 "	640
All	1	13	2 "	640
All	3	13	2 "	640
All	5	13	2 "	640
All	7	13	2 "	640
All	9	13	2 "	640
All	11	13	2 "	640
All	13	13	2 "	640
All	15	13	2 "	640
All	17	13	2 "	640
All	23	13	2 "	640
All	25	13	2 "	640
S. ½ N. E. ¼	1	14	2 "	80
S. ½ N. W. ¼	1	14	2 "	80
S. ½	1	14	2 "	320
S. ½ S. E. ¼	9	14	2 "	80
S. W. ¼	9	14	2 "	80
S. ½ N. E. ¼	17	14	2 "	80
S. ½ N. W. ¼	17	14	2 "	80
All	19	14	2 "	640
All	21	14	2 "	640
All	23	14	2 "	640
All	25	14	2 "	640
All	27	14	2 "	640
All	29	14	2 "	640
All	31	14	2 "	640
All	33	14	2 "	640
All	35	14	2 "	640
All	1	13	3 W.	640
All	3	13	3 "	640
S. ½ S. E. ¼	7	13	3 "	80
S. ½ S. W. ¼	7	13	3 "	80
All	9	13	3 "	640
All	11	13	3 "	640
All	13	13	3 "	640
All	15	13	3 "	640
All	17	13	3 "	640
All	25	14	3 "	640
All	25	14	3 "	640
Total acreage				158,480.00

Part of section.	S.	T.	R.	Acres.
All	1	19	1 E.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
N. ½	25	"	"	320
N. ½ S. E. ¼	"	"	"	80
N. ½ S. W. ¼	"	"	"	80
All	27	"	"	640
All	29	"	"	640
N. ½	31	"	"	320
N. ½ N. E. ¼	33	"	"	80
N. ½ N. W. ¼	"	"	"	80
S. ½	7	20	1 E.	320
S. ½	9	"	"	320
S. ½ N. E. ¼	11	"	"	80

Part of section.	S.	T.	R.	Acres.
S. ½ N. W. ¼	11	20	1 E.	80
396 S. ½	11	"	"	320
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	20	1 E.	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	19	2 E.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640

EXHIBIT L—Continued.

Part of section.	S.	T.	R.	Acres.
All	19	19	2 E.	640
All	21	"	"	640
All	23	"	"	640
N. ½	25	"	"	320
N. ½	27	"	"	320
N. ½	29	"	"	320
N. ½ S. E. ¼	29	"	"	80
N. ½ S. W. ¼	29	"	"	80
S. ½	1	20	2 E.	320
S. ½ S. E. ¼	3	"	"	80
S. ½ S. W. ¼	"	"	"	80
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	20	2 E.	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	19	3 E.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	1	20	3 E.	640
S. ½ N. E. ¼	3	"	"	80
S. ½ N. W. ¼	3	"	"	80
S. ½	3	"	"	320
S. ½	5	"	"	320
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	20	3 E.	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	19	4 E.	640
All	3	"	"	600
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
N. ½	19	"	"	320
N. ½	21	"	"	320
All	1	20	4 E.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	20	4 E.	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640

Part of section.	S.	T.	R.	Acres.
All	27	20	4 E.	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
S. ½ S. E. ¼	31	21	4 E.	80
S. ½ S. W. ¼	"	"	"	80
S. ½	33	"	"	320
S. ½ N. E. ¼	35	"	"	80
S. ½ N. W. ¼	35	"	"	80
S. ½	35	"	"	320
All	1	19	5 E.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
* Below				
All	17	"	"	640
N. ½ N. E. ¼	21	"	"	80
N. ½ N. W. ¼	"	"	"	80
N. ½ N. E. ¼	23	"	"	80
N. ½ N. W. ¼	"	"	"	80
* All	15	"	"	640
All	1	20	5 E.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
S. ½ N. E. ¼	31	21	5 E.	80
S. ½ N. W. ¼	31	"	"	80
S. ½	31	"	"	320
S. ½	33	"	"	320
S. ½	35	"	"	320
All	1	19	6 E.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	19	6 E.	640
All	17	"	"	640
N. ½ N. E. ¼	19	"	"	80
N. ½ N. W. ¼	19	"	"	80
397 N. ½ N. E. ¼	21	"	"	80
N. ½ N. W. ¼	21	"	"	80
N. ½	23	"	"	320
All	1	20	6 E.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
S. ½ N. E. ¼	31	21	6 E.	80
S. ½ N. W. ¼	31	"	"	80

EXHIBIT L—Continued.

Part of section.	S.	T.	R.	Acres.
S½	31	21	6 E.	320
S½	33	"	"	320
S. ½ S. E. ¼	35	"	"	80
S. ½ S. W. ¼	35	21	6 E.	80
N. E. ¼	1	19	7 E.	160
N. ½ S. E. ¼	1	"	"	80
N. W. ¼ S. W. ¼	1	"	"	40
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
S. ½ N. E. ¼	11	"	"	80
S. ½	11	"	"	320
S. ½ N. W. ¼	11	"	"	80
N. W. ¼ N. W. ¼	11	"	"	40
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
N. ½	19	"	"	320
N. ½ S. E. ¼	19	"	"	80
N. E. ¼ S. W. ¼	19	"	"	40
E. ½	21	"	"	320
E. ½ S. W. ¼	21	"	"	80
N. W. ¼ S. W. ¼	21	"	"	40
N. W. ¼	21	"	"	160
All	23	"	"	640
N. ½ N. E. ¼	25	"	"	80
N. E. ¼ N. W. ¼	25	"	"	40
S. ½	1	20	7 E.	320
S. ½ N. E. ¼	3	"	"	80
S. ½ N. W. ¼	3	"	"	80
S. ½	3	"	"	320
All	5	"	"	640
All	7	20	7 E.	640
N. ½	9	"	"	320
S. E. ¼	9	"	"	160
N. ½ S. W. ¼	9	"	"	80
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
E. ½	21	"	"	320
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
S. W. ¼	29	"	"	160
N. W. ¼ N. W. ¼	29	"	"	40
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
N. E. ¼	1	19	8 E.	160
N. ½ N. W. ¼	1	"	"	80
S. W. ¼ N. W. ¼	1	"	"	40
W. ½ S. W. ¼	1	"	"	80
N. E. ¼	3	"	"	160
N. ½ S. E. ¼	3	"	"	80
S. E. ¼ S. E. ¼	3	"	"	40
E. ½ N. E. ¼	5	"	"	80
N. ½ S. E. ¼	5	"	"	80
S. E. ¼ S. E. ¼	5	"	"	40
E. ½ N. W. ¼	5	"	"	80
N. W. ¼ N. W. ¼	5	"	"	40
N. E. ¼ N. E. ¼	9	19	8 E.	40
E. ½ S. E. ¼	9	"	"	80
S. W. ¼ S. E. ¼	9	"	"	40
N. W. ¼ S. W. ¼	9	"	"	40
E. ½ N. E. ¼	11	"	"	80
N. E. ¼ S. E. ¼	11	"	"	40
S. W. ¼ S. E. ¼	13	"	"	40
E. ½ S. W. ¼	13	"	"	80
S. W. ¼ N. W. ¼	13	"	"	40
S. ½ N. E. ¼	15	"	"	80
S. ½	15	"	"	320
N. W. ¼	15	"	"	160
S. ½ N. E. ¼	17	"	"	80
S. ½	17	"	"	320
N. W. ¼	17	"	"	160
All	21	"	"	640
S. W. ¼	23	"	"	160
W. ½ N. W. ¼	23	19	8 E.	80
E. ½ N. E. ¼	25	"	"	80
E. ½ S. E. ¼	25	"	"	80
S. ½ N. W. ¼	25	"	"	80
N. W. ¼ N. W. ¼	25	"	"	40
All	27	"	"	640
All	29	"	"	640
N. E. ¼	33	"	"	160
N. ½ S. E. ¼	33	"	"	80
S. E. ¼ S. E. ¼	33	"	"	40
N. ½ S. W. ¼	33	"	"	80
S. ½ S. E. ¼	35	"	"	80
N. ½ S. W. ¼	35	"	"	80
S. ½ N. W. ¼	35	"	"	80
S. ½ S. E. ¼	3	20	8 E.	80
S. ½ S. W. ¼	3	"	"	80
S. ½	5	"	"	320
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
E. ½	15	"	"	320
All	17	"	"	640
W. ½	21	"	"	320
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
E. ½	33	"	"	320
All	35	"	"	640
All	1	19	9 E.	640
All	3	"	"	640
N. ½	5	"	"	320
N. W. ¼	7	"	"	160
N. W. ¼ S. W. ¼	7	"	"	40
E. ½ S. E. ¼	9	"	"	80
N. W. ¼	11	"	"	160
N. W. ¼ S. W. ¼	11	"	"	40
N. ½	13	"	"	320
S. E. ¼	13	"	"	160
N. ½	15	"	"	320
S. E. ¼	15	"	"	160
N. E. ¼ S. W. ¼	15	"	"	40
N. E. ¼	17	"	"	160
N. ½ S. W. ¼	17	"	"	80
S. ½	19	"	"	320
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	5	19	10 E.	640
N. W. ¼ N. W. ¼	3	"	"	40
All	7	"	"	640
N. W. ¼ N. W. ¼	9	"	"	40
N. ½ N. W. ¼	17	"	"	80
N. ½	19	"	"	320
S. ½	19	20	10 E.	320
All	29	"	"	640
All	31	"	"	640
All	33	20	10 E.	640
All	1	19	1 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640

EXHIBIT L—Continued.

Part of section.	S.	T.	R.	Acres.
All	11	19	1 W.	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
N. ½	35	"	"	320
N. ½ S. E. ¼	35	"	"	80
N. ½ S. W. ¼	35	"	"	80
All	13	20	1 W.	640
All	15	"	"	640
S. ½ N. E. ¼	17	"	"	80
S. ½ N. W. ¼	17	"	"	80
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	20	1 W.	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
N. ½ N. E. ¼	5	18	1 W.	80
N. ½ N. W. ¼	5	"	"	80
All	1	18	2 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
N. ½	11	"	"	320
N. ½ S. E. ¼	15	18	2 W.	80
N. ½ N. W. ¼	15	"	"	80
All	17	"	"	640
All	19	"	"	640
All	1	19	2 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	13	20	2 W.	640
All	15	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	20	2 W.	640
All	35	"	"	640
All	1	18	3 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	27	"	"	640

Part of section.	S.	T.	R.	Acres.
All	29	18	3 W.	640
All	31	"	"	640
N. ½	33	"	"	320
W. ½ S. E. ¼	33	"	"	80
S. W. ¼	33	"	"	160
All	1	19	3 W.	640
All	3	"	"	640
S. ½	5	"	"	320
S. ½	7	"	"	320
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	19	3 W.	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
S. ½	25	20	3 W.	320
S. ½	35	"	"	320
All	1	18	4 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	19	4 W.	640
All	15	"	"	640
All	17	"	"	640
All	13	"	"	640
S. E. ¼	15	"	"	160
S. ½	21	"	"	320
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
E. ½	29	"	"	320
S. W. ¼	29	"	"	160
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	18	5 W.	640
S. ½	3	"	"	320
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	13	15	7 W.	640
Lots 1, 2, 3, & 4	15	"	"	160
Lots 1, 2, 3, & 4	17	"	"	40
All	19	"	"	640
399 All	21	"	"	640
All	23	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	1	14	8 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	29	"	"	640
All	31	"	"	640
Lots 1, 2, 3, & 4	13	15	8 W.	40
Lots 1, 2, 3, & 4	15	"	"	40
Lots 1, 2, 3, & 4	17	"	"	40
All	7	"	"	640
All	19	"	"	640
All	21	"	"	640

EXHIBIT L—Continued.

Part of section.	S.	T.	R.	Acres.
All	23	15	8 W.	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
W. ½ N. E. ¼	1	13	9 W.	80
W. ½ S. E. ¼	1	"	"	80
W. ½	1	"	"	320
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	17	"	"	640
N. ½	19	"	"	320
N. ½ S. E. ¼	19	"	"	80
S. W. ¼ S. E. ¼	19	"	"	40
S. W. ¼	19	"	"	160
All	1	14	9 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	14	9 W.	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	15	9 W.	640
S. E. ¼	9	"	"	160
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
S. E. ¼	17	"	"	160
S. ½	19	"	"	320
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	13	10 W.	640
All	3	"	"	640
All	5	13	10 W.	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
N. ½	25	"	"	320
N. ½ S. E. ¼	25	"	"	80
N. ½ S. W. ¼	25	"	"	80
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	1	14	10 W.	640
All	3	"	"	640
E. ½	9	"	"	320
S. W. ¼	9	"	"	160
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	14	10 W	640
All	21	"	"	640

Part of section.	S.	T.	R.	Acres.
All	23	14	10 W.	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
S. fractional ½	25	15	10 W.	320
E. " ½	35	15	10 W.	240
All	1	12	11 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	1	13	11 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	13	11 W.	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
S. ½ N. E. ¼	13	14	11 W.	80
S. ½ N. W. ¼	13	"	"	80
S. ½	13	"	"	320
S. ½	21	"	"	320
S. ½	23	"	"	320
All	25	"	"	640
All	27	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	12	12 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	15	"	"	640
All	17	"	"	640
All	1	13	12 W.	640
S. ½	3	"	"	320
S. ½	7	13	12 W.	320
E. ½	9	"	"	320
S. W. ¼	9	"	"	160
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
400 All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
All	25	"	"	640
All	27	"	"	640
All	29	"	"	640
All	31	"	"	640
All	33	"	"	640
All	35	"	"	640
All	1	12	13 W.	640
All	3	"	"	640
All	5	"	"	640
All	7	"	"	640
All	9	"	"	640
All	11	"	"	640
All	13	"	"	640
All	15	"	"	640
All	17	"	"	640
All	19	"	"	640
All	21	"	"	640
All	23	"	"	640
E. ½	13	13	13 W.	320
S. W. ¼	13	"	"	160

EXHIBIT L—Continued.

Part of section.	S.	T.	R.	Acres.	Part of section.	S.	T.	R.	Acres.
S. ½	15	13	13 W.	320	All	33	13	14 W.	640
S. ½	19	"	"	320	All	35	"	"	640
All	21	"	"	640	All	1	11	15 W.	640
All	23	"	"	640	All	3	"	"	640
All	25	"	"	640	All	5	"	"	640
All	27	"	"	640	S. ½ N. E. ¼	1	12	15 W.	80
All	29	"	"	640	S. ½ N. W. ¼	1	"	"	80
All	31	"	"	640	S. ½	1	"	"	320
All	33	"	"	640	All	9	"	"	640
All	35	"	"	640	All	11	"	"	640
All	1	12	14 W.	640	All	13	"	"	640
All	3	"	"	640	All	15	"	"	640
All	5	"	"	640	All	17	"	"	640
All	7	"	"	640	All	19	"	"	640
All	9	"	"	640	All	21	"	"	640
All	11	"	"	640	All	23	"	"	640
All	13	"	"	640	All	25	"	"	640
All	15	"	"	640	All	27	"	"	640
All	17	"	"	640	All	29	"	"	640
All	19	"	"	640	All	31	"	"	640
All	21	"	"	640	All	33	"	"	640
All	23	"	"	640	All	35	"	"	640
All	25	"	"	640	E. ½	1	11	16 W.	320
All	27	"	"	640	E. ½	13	12	16 W.	320
All	29	"	"	640	E. ½	25	"	"	320
All	31	"	"	640					
All	33	"	"	640					374,720
All	35	"	"	640					158,480
S. ½	25	13	14 W.	320					
S. ½	27	"	"	320	Total acres				533,200

Upon the back of said amended bill appear endorsements in words and figures following, to wit:

No. 113, C. United States circuit court, district of Nebraska. The United States *vs.* The Burlington and Missouri River Railroad Company in Nebraska. Amended bill of complaint. Jas. Neville, U. S. attorney, district of Nebraska. Filed Oct. 9, 1875. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 8th day of November, 1875, a demurrer was filed in said case; which said demurrer is in words and figures following, to wit:

In the United States Circuit Court, District of Nebraska.

The demurrer of The Burlington & Missouri River Railroad Company in Nebraska, defendant, to the amended bill of complaint of The United States of America, plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the said complainant hath not in and by his said bill
401 made or stated such a case as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant. Wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill or

any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

T. M. MARQUETT,
Attorney for Plaintiff.

J. M. WOOLWORTH, *Of Counsel.*

I certify that, in my opinion, the above demurrer is good in law & not filed for delay.

J. M. WOOLWORTH.

Upon the back of said demurrer appear endorsements in words and figures following, to wit:

No. 113, C. U. S. circuit court, district of Nebraska. The United States of America *vs.* The Burlington and Missouri River Railroad Company in Nebraska. Demurrer to amended bill. Filed Nov. 8, 1875. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 8th day of January, 1876, a stipulation was filed in said case; which said stipulation is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

THE UNITED STATES
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA.

It is hereby stipulated by and between the parties to this suit that the following amendments may be incorporated into the amended bill of complaint, and stand and be parts thereof, with the same force and effect in all respects as if made and incorporated in the said bill at the filing thereof:

To the thirty-third paragraph of the 24th page shall be added the following words, viz: "That the grant of 1864, amending the grant of 1862, did not give the Union Pacific Company any additional lands opposite to the line of its road from the point on the one hundredth meridian east to the Missouri river; that the Union Pacific Company is not, therefore, entitled to lands beyond the ten-miles limit from the line of its road known as the Iowa branch. Therefore the defendant is entitled to one thousand and twenty-odd sections of land, being all the odd-numbered sections lying between the ten and the twenty miles limit of the Union Pacific Company's road from said one hundredth meridian east, provided defendant is entitled to take lands beyond a limit of twenty miles from its road; yet the Union Pacific Company procured the land department to patent to it all of the odd-numbered sections between a line of ten miles from its road and a line twenty miles from its road, both on the north and the south thereof, between the one hundredth meridian and the Missouri river, save and except two hundred and nine thousand two hundred and sixty acres, as hereinbefore stated and
402 referred to as not patented. In consequence whereof the defendant obtained lands conveyed in the patents to it hereto-

fore mentioned to the extent of the lands so improperly obtained by said Union Pacific Company."

In the thirty-third paragraph of said page, after the words "that the defendant was entitled to patents to," shall be inserted the words "all, or at least."

In the last line of said page, after the word "taken," shall be inserted the words "all, or at least."

In the 45th paragraph, on the 27th page, after the words "entitled to patents," shall be inserted the words "all, or at least."

In the line next to the last line on the said page, after the words "in lieu," shall be inserted the word "of."

In the 46th paragraph, on the 28th page, after the words "received patents to," in the 4th line of said page, shall be inserted the words "all, or at least."

In the 46th paragraph, on the said 28th page, after the words "are to the extent of," shall be inserted the words "all, or at least."

In the 48th paragraph, on the 29th page, in the third subdivision of said paragraph, after the words "entitled to patents to," shall be inserted the words "all, or at least."

In the said 29th page, in the 4th subdivision of the said 48th paragraph, after the words "should have received patents to," shall be inserted the words "all, or at least."

In the said 29th page, in the 4th subdivision of said 48th paragraph, after the words "twenty-section limit," shall be inserted the following words: "That the defendant, if entitled to lands beyond the distance of twenty sections from its road in lieu of lands otherwise disposed of, should only take lands directly opposite, north or south, from said odd-numbered sections so as aforesaid otherwise disposed of; that defendant is not entitled to take lands opposite one division of twenty miles of completed road in lieu of other lands otherwise disposed of opposite another division of twenty miles of completed road."

JAMES NEVILLE,
U. S. Att'y Dist. Neb.
J. M. WOOLWORTH,
Of Counsel for Def't.

Upon the back of said stipulation appear endorsements in words and figures following, to wit:

No. 113, C. U. S. circuit court. The United States *vs.* The B. & M. Railroad Company in Nebraska. Stipulation to amend bill. Filed Jan. 8, 1876. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 19th day of April, 1876, an agreement was filed in said case; which said agreement is in words and figures following, to wit:

In the U. S. Circuit — for the District of Nebraska.

THE UNITED STATES
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD IN NEBRASKA.

It is hereby stipulated and agreed by and between James Neville, attorney for the United States, and J. M. Woolworth, attorney
403 for the B. & M. R. R. Co., in the above-entitled cause that the following amendment shall be made in the amended bill in said cause, to wit, after the word "acres," in the tenth line of the second subdivision of paragraph eight, on page eight, shall be inserted the words "of the value of five millions of dollars."

And they do further stipulate that they will and do by consent argue the demurrer now pending in said cause in chambers before Justice Miller, at Washington city, the — and — of January, 1876, and that when said court shall pass upon said demurrer and make his order and decree upon the same it shall contain the usual and proper prayer for an appeal, and the allowance of the same by the attorney for the United — the same as if he were present to request the same, provided the said demurrer shall be sustained, and same right is hereby given to def't.

J. M. WOOLWORTH,
Of Counsel for Def't.
JAMES NEVILLE,
Attorney for the United States.

Upon the back of said agreement appear endorsements in words and figures following, to wit:

No. 113, C. United States *vs.* The Burlington & Missouri River Railroad in Nebraska. Agreement to amend amended bill. Filed Apr. 19, 1876. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 5th day of May, 1876, an opinion was filed in said case; which said opinion is in words and figures following, to wit:

In the Circuit Court for the District of Nebraska.

THE UNITED STATES
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA.

Mr. Neville, U. S. dist. att'y, for the plaintiff.
Mr. Woolworth, for the defendant.

MILLER, *Circuit Justice:*

This case comes before me on a demurrer to a bill in equity filed on behalf of the United States by the district attorney. The object of the bill is to have a declaration of the nullity in whole or in part of several patents on lands issued to the defendant under section nineteen of the act of July 2, 1864, which was an act to amend the

act "to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July 1, 1862." (13 U. S. Statutes, 356.)

The 18th section of this amendatory act of 1864 grants to the Burlington and Missouri River Railroad Company, an existing corporation under the laws of Iowa, the right of way and the use of adjacent lands for earth, stone, timber, &c., through the Territory of Nebraska, from the point on the Missouri river south of the mouth of Platte river, where it may choose to cross, to an intersection with the main track of the Union Pacific railroad not further west than the one hundredth meridian of longitude.

404 Section nineteen, out of the construction of which this suit mainly arises, is here given *verbrtim*:

"Be it further enacted, That for the purpose of aiding in the construction of said road there be, and hereby is, granted to said Burlington and Missouri River Railroad Company every alternate section of public lands (excepting mineral lands as reserved by this act) designated by odd numbers, to the amount of ten sections per mile on each side of said road on the line thereof, and not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed: Provided, That said company shall accept this grant within one year from the passage of this act by filing said acceptances with the Secretary of the Interior, and shall also establish the line of said road and file a map thereof with the Secretary of the Interior within one year from the date of said acceptance, when said Secretary shall withdraw the lands mentioned in this grant from market."

1. The first question arising in the case comes out of the construction of this section asserted in the bill, that no lands are granted by this act outside of a lateral limit of twenty miles on each side of the road. It is very difficult to presume on what principle this construction can be maintained; no lateral limit is mentioned nor any twenty miles. The grant is one of amount or quantity, and that quantity is to be had subject alone to these restrictions: 1. The sections can only be of odd numbers. 2. They must be limited to ten per mile on each side of the road. 3. They must be on the line of the road. 4. They must be of lands not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or a homestead claim had not attached at the time the road was definitely located. There is no limitation by any lateral line, as it was very well known that the road must run through the most settled part of Nebraska, and that much of the land along its line was already disposed of, and that within the two years allowed for the definite location of the road much more of it would be claimed under homestead and pre-emption laws. It was clear to the framers of the act that the company could not get the amount of ten alternate sections on each side of the road within a limit of twenty miles.

If it be said that all other grants, and especially the other grants of lands to the Pacific railroad in the original and amended acts,

have their lateral limits, we answer that the difference in the phraseology of the grant and other circumstances show an intention not so to limit it in this case.

There is probably no railroad grant to be found within those lateral limits when the grant is of any "amount" or "number of odd sections." The phrase is always every alternate odd, or one section within certain limits, and Congress generally gives an indemnity on such of these sections as have been reserved or disposed of by express language authorizing them to be selected elsewhere, outside the limit. What is still more significant is that in this very act of 1864 the original grant of 1862 to the Union Pacific Company is increased from five sections on each side of the road to ten, and the preamble of lateral limits of the original act is mentioned, but enlarged to twenty miles only on each side to meet the increased number of sections granted. The 17th section of this act also grants to a corporation thereafter to be organized, to build a road from Sioux City, in Iowa, to a junction with the Union Pacific, the same number of alternate sections of land for ten miles in width
405 on each side of the road. We are forced to the conclusion that when, after enlarging the limit of the original grant to the main road by section four of this act, and on granting to a new company lands to build the Sioux City Branch by section seventeen. in both of which the lands were to be found within a certain limit, Congress made this grant of a certain amount of such lands without such limit, it was intentional and of a purpose. (13 U. S. Statutes at Large, 356.)

The reason for this difference is also clear; for all the branches of the road mentioned in the act of 1862, of which the Sioux City Branch was one and the Burlington and Missouri R. was not, there was a large subsidy of bonds of the United States per mile in addition to the lands granted by Congress. But when, two years after that body authorized the Burlington & M. R. R. Company to extend its road to a junction with the main road through Nebraska and parallel, or nearly so, to this main road, it did not choose to give that company any bonds or money, and for this reason, as well as because such a large part of land had been already disposed of within a limit of twenty miles, it was deemed a reasonable measure of equalizing the donations to permit the whole amount of ten sections on each side of the road to be taken, if they could be found without any lateral restriction.

2. The next allegation of the bill demanding attention is that a large number of the sections or parts of sections of land included in these patents lie some fifty or a hundred miles distant from the road and do not come within the description of the grant as being "on the line thereof."

It is extremely difficult to fix any very precise meaning to this phrase. It is used in reference to the grant to the Union Pacific Company in connection with the twenty-mile limit. It cannot, therefore, mean contiguous to the road-bed or to the land taken for the road-bed, as a section of land twenty miles distant from the road-bed is clearly within the grant. If twenty miles distant is on

the line, what limit in a lateral direction can you say is not? The equivalent phrase in the grant to the Sioux City Branch is "on each side of the same along the whole length of said road." The line of the road seems here to be used for the course or direction of the road, and along its whole length means probably parallel with its course and between its termini. And this is what I suppose is really meant, that the land shall be taken along a parallel to the general direction of the road on each side of it and within lines pependicular to its terminus at each end.

3rd. The next section of this act, to wit, S. 20, provides that when any consecutive twenty miles of the road has been completed and this shall be made to appear to the President, "patents shall issue carrying the right and title to said lands to said company on each side of said road, as far as the same is completed, to the amount aforesaid." And the bill insists that when a patent issues for any section of twenty miles, no land could lawfully be included which did not lie parallel to that twenty miles and within lines drawn perpendicular to each end of that twenty miles. It then alleges that this rule was disregarded and large numbers of sections were included in the patents issued on the completion of every section of twenty miles which lay east or west of the termini of those sections, the road running nearly east and west.

It may be conceded that when the company presented its claim over the lands it was entitled to by reason of the completion of any specified section of twenty miles they were only entitled to lands parallel to that section and not either east or west of its respective termini; but they were neither bound to apply for or receive their patents by sections of twenty miles. It was optional with the
406 company to await the final completion of the road and get all the lands to which they would have been entitled at the same time. What would they have been? Obviously ten sections on each side of the whole length of the road, without regard to the section of twenty miles; or, if the full quantity was not found on each twenty-mile section when applied for in sections *whether* the limits of that subdivision, a patent might have been taken for what could be so found and the remainder would be due to the company when the road was finished. If, then, the patents as they now stand only represent what the company was entitled to on the completion of the road, I think the error, if there was one, in issuing them too soon does not require that they should be set aside, since the road has now been completed for two or three years and no possible injury can result to the United States.

If our construction of the nineteenth section and of the amendatory acts is sound the defendant has received no more lands than it was entitled by the mistake of the commissioners, nor any other lands than what it would have had if it had used its patent for the whole after the road was finished. If these patents were set aside the company could now ask that the same lands be repatented to it.

4. The road of the defendant and the road of the Union Pacific Company run for many miles parallel to each other and so near as

to be within twenty miles of each other on the south side of the road of the latter company.

In the selection of lands for the defendant company the Department of the Interior refused to permit it to take any lands within the twenty miles on each side of the Union Pacific road, on the ground that the right of that company to the alternate odd sections within that limit was paramount to that of the Burlington & Missouri R. R. R. Co.; that a strip of forty miles in width on the north of the road of defendant was excluded from its selection. The bill before me now alleges that this was all wrong; that, first, the track of the Union Pacific had no grant at all of lands; and, secondly, if it had, it was only by the act of 1864, made at the same time with the grant to defendant, and therefore their rights were equal when the roads brought them in conflict.

The act of 1862 created a corporation called the Union Pacific Railroad Company, and authorized this company and others to construct a single line of road from the one hundred- meridian of west longitude towards the Pacific Ocean, with these boundaries from this meridian westward. One of these branches was to commence on the western boundary of Iowa at such a point as the President should select, and thence to join the main road at the one hundreth meridian. Specific grants of so much in bonds for each mile and for so much land for each mile were made to all new roads by the same act. Section 3 of the act, speaking of the Union Pacific, the only company chartered by the act, declares that there is hereby granted to said company, for the purpose of assisting in the construction of said railroad and telegraph line, every alternate section of public lands to the amount of five sections per mile on each side of said railroad, on the line thereof, and within ten miles on each side of the road. It is argued that because the Iowa Branch is separately described as such and the road from the one hundredth meridian of longitude to the western boundary of Nebraska is spoken of by the new line of the Union Pacific that no grant is given for the Iowa Branch.

But the caption of the act speaks of a road from the Missouri river to the Pacific Ocean. The grants are made to build this road
407 and the branches as parts of it. There is nothing in the act to indicate and no reason can be given why the lands on each side of the branch should not be given as well as on the main road and the other branches. If the lands are not given for the branch, neither are the bonds. Yet the President, the Secretary of the Treasury and of the Interior, and subsequent acts of Congress have all recognized the grant both of bonds and lands as extending to this branch as to the points of the road.

I do not doubt that there was such a grant intended, and that intent must control.

The said act, however (S. 3, 12 U. S. Statutes, 492), only gave five alternate sections per mile on each side within a limit of ten miles on each side of the road. By section 4 of the amendatory act of 1864 it is enacted that section three of the original act be hereby amended by striking out the word "five"

when the same occurs in said section and by inserting in lieu thereof the word "ten," and by striking out the word "ten" when the same occurs in said section and inserting in lieu thereof the word "twenty." It will be seen on a comparison of the sections that as amended it is a grant of ten sections on each side of the road within twenty miles thereof. It is argued by counsel for plaintiff that as to the enlarged grant outside of the ten-mile limit it is made by the same act and takes effect as of the same date as the grant to the Burlington & M. R. R. R. Co., found in the subsequent section nineteen, and that where the lines of the road make a lap in which the right of selection conflicts the alternate odd sections should have been equally divided between the two companies, and that the lands patented to the defendant in lieu of those to which it was entitled within the limits of this conflict were so done in violation of law, and the title void.

But I am of opinion that the Land Department correctly decided that the title of the Union Pacific Company within twenty miles on each side of its road was paramount and exclusive.

Looking to the certainty that in some portions of their lines these roads must before their connection run parallel with — other within the twenty-mile limit of the Union Pacific, it seems reasonable that Congress, instead of enlarging the grant to this road in general terms, used words which made the amendment a part of the original grant for the purposes of having it take effect as of the date of that grant. In other words it incorporates *nunc pro tunc* words which make that grant one for twenty miles on each side of its road. Whether this retrospective character could be given to the amendment in a case where intervening rights had attached we need not now decide. Probably it would not; but the Burlington & Missouri R. R. R. Co. takes its right by the same statute which says that the former act shall read so as to give the Union Pacific the lands now the subject of controversy. This view would commend itself to Congress by its intrinsic equity, for by it each road gets the largest quantity of land which the statute permits, while the other construction allows the B. & M. Co. to get all it could under all circumstances, the other road losing what the latter took within the lap. This comes out of the fact that the B. & M. Company was not confined within any lateral limits, while the Union Pacific could not go without its twenty-mile limit to make up deficiencies.

Besides, both of these roads have acquired, in the construction given and acted on by the United States, the officers of the Government having prescribed it as the one which should govern
408 all their rights, the patents have been issued under it for the full amount of all the land which could be so claimed under both grants, and innocent purchasers have no doubt become owners of much of the land patented to the Union Pacific Company; and it is certainly all mortgaged, so that an incalculable amount of injustice would be done by holding all this void and setting aside the patents. If the patents are not absolutely void, and only voidable, then every principle of equity of the settlement of conflicting and

doubtful rights acquiésced in by the parties and of the essential question of that settlement is opposed to setting aside these patents at the instance of the United States.

5. There remains one more ground for equitable relief relied on by the bill. It is alleged that one hundred and fifty thousand acres of land lying on the north side of defendant's road have been patented in lieu of lands found deficient on the south side of the road, and that the lands so patented are void.

I am of opinion that the act of Congress did not intend to grant twenty sections per mile for the road, but ten sections per mile on each side of the road; that no right to take more on either side of the road than what amounted to ten sections per mile on that side was conferred. If for any reason the required number of sections could not be found on one side it was, as in the case of a similar deficiency in the twenty-mile limit of the other road, a loss which Congress had made no provision to supply. There existed, therefore, no power in the office of the Land Department to issue patents for lands on the north side for those not found on the south side. If the lands so patented can be identified, I think the Government is entitled to have a declaration that as to these the patent conveys no title.

But the bill before me does not so identify them. I find no description of them by congressional subdivision, nor by reference to any patent containing them exclusively, nor by reference to any schedule of them. The court cannot declare all the patents issued void because there are some lands included in some of the patents which there was no right to convey.

As the bill stands the demurrer must be sustained. If, however, the attorney for the United States thinks he can amend so as to identify these lands by specific description he has leave to do so. If he does this defendant can either renew his demurrer or answer as to that part of the bill. If he renews his demurrer it may be considered as overruled. If he chooses to abide the demurrer a decree can go for the plaintiffs on the lands so described. If plaintiff abides by his bill as it now stands it must be dismissed on the demurrer. [Subsequently the district attorney amended the prayer of his bill (being unable to describe the lands specifically) & asked that the company be decreed to reconvey to the United States an equal amount of lands or pay the value of the excess; & to the bill as amended the circuit justice sustained a demurrer, being of opinion that the U. S. is not entitled to such relief, as neither the specific lands nor their value can be ascertained as a foundation for relief, nor the value of the lands to be so conveyed.]

Bill dismissed.

Upon the back of said opinion appear endorsements in words and figures following, to wit:

No. 113, C. United States *vs.* The Burlington & Mo. River R'd Co. in Neb. Opinion of Mr. Justice Miller. Filed May 5, 1876. Watson B. Smith, clerk.

409 Thereupon afterwards, at the May term of said court and on the 5th day of May, 1876, the following proceedings were had in said case, as appears of record on folio 561, Journal C, of said court, to wit:

UNITED STATES
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA.

This cause came on to be heard upon the defendant's demurrer to the bill before his honor Mr. Justice Miller, and was argued by counsel; whereupon the said judge found the demurrer not to be well taken, as appears from his opinion in that behalf on file in this cause; and thereupon the said plaintiff moved the said judge for leave to amend its bill by interlining therein prayer that in lieu of 150,000 acres of land patented to the defendant on the north of its road to supply deficiencies on the south thereof, which being allowed, the said bill was further heard upon the said demurrer; and thereupon it was ordered, adjudged, and decreed that the said demurrer be, and the same is hereby, sustained, and that the said bill be dismissed out of this court; and thereupon the said plaintiffs, by their counsel, in open court prayed an appeal from this decree to the Supreme Court, which is hereby allowed.

Thereupon, afterwards, to wit, on the 14th day of August, 1876, a stipulation was filed in said case; which said stipulation is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

THE UNITED STATES
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD IN NEBRASKA.

It is hereby stipulated and agreed by and between the attorneys for the plaintiff and defendant in the above-entitled cause that the original maps now attached to the petition in said cause in the circuit court shall be attached to the transcript of the petition for the Supreme Court, and shall become a part and parcel of said transcript the same as if the said maps had been reprainted and transcribed from said original.

JAMES NEVILLE,
Att'y for the U. S.
J. M. WOOLWORTH,
Att'y for Defendant.

Upon the back of said stipulation appear endorsements in words and figures following, to wit:

No. 113, C. United States *vs.* B. & M. R. R. in Neb. Stipulation. Filed Aug. 14, 1876. Watson B. Smith, clerk.

DISTRICT OF NEBRASKA, *ss:*

I, E. D. Frank, clerk of the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the foregoing folios, from one to 390, contain true and faithful
410 transcripts of the petition, answer, petition and order for removal, replication, stipulation, and decree, pleadings, process, and proceedings of record and on file in my office as said clerk, and the endorsements thereon, in the case of The United States *vs.* The Burlington and Missouri River Railroad Company in Nebraska.

Witness my hand and the seal of said court, at Omaha, this 14th day of August, A. D. 1876.

[SEAL.] WATSON B. SMITH, *Clerk.*

(Indorsement on cover:) No. 146. The United States, appellant, *vs.* The Burlington & Missouri River Railroad Company in Nebraska. Nebraska C. C. U. S. Filed 8th September, 1876.

411 EXHIBIT "K" (T. M. Marquette's Testimony, C. P. D.).

Pleas before the Hon. Geo. W. McCrary, judge of the circuit court of the United States for the district of Nebraska, within the eighth judicial circuit, at the term of November, 1880.

Be it remembered that on the 5th day of February, 1879, a bill was filed in the office of the clerk of said circuit court; which said bill is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

LORAN CLARKE, on Behalf of Himself and All Others Similarly Situated, Complainant,

vs.

THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN Nebraska, Horatio H. Hunnewell, The Board of County Commissioners of Boone County, Nebraska, and S. P. Bollman, Treasurer of said County, Respondents,

To the honorable judges of the United States circuit court in and for the district of Nebraska:

Humbly complaining, your orator, Loran Clarke, a citizen of Boone county, in the State of Nebraska, brings this his bill of complaint against the Burlington and Missouri River Railroad Company in Nebraska, a corporation organized under and by virtue of the laws of Nebraska and a citizen of said State; Horatio H. Hunnewell, a citizen of the State of Massachusetts; the Board of County Commissioners of Boone County, Nebraska, and S. P. Bollman, treasurer of said county, residents and citizens of said State of Nebraska, and for cause of complaint showeth unto your honors—

412 1. That he is a resident and tax-payer of Boone county, Nebraska, and is duly authorized by at least one-third of the

tax-payers of said county, as well in amount as in numbers, to bring this bill of complaint as well upon their behalf as his own, they being similarly situated.

2. Your orator further says that the Burlington and Missouri River Railroad Company in Nebraska is and has been since the year 1872 the owner of all the lands and real estate described in the list of the same attached to complainant's bill and referred to herein as Schedule "A;" that ever since the year 1872 up to the present time all of said lands were and are legally subject to taxation for all legal purposes in the said county of Boone, Nebraska, and ought in law and equity to have paid and contributed during all the said years to the said State and county their proper and equitable proportion of taxes, and the same ought in law and equity to have been paid by said railroad company to the county and State aforesaid: yet your orator says that no taxes of any kind nor interest or penalties thereon have ever been paid by said railroad company or by any other person upon said lands nor has any person ever offered to pay the same or any portion thereof.

3. Your orator further says that there have been duly and legally assessed and levied upon the said lands by the proper authorities of Boone county, Nebraska, taxes for State, county, and school purposes for the following years in about the following amounts:

1873	$15,663 03
1874	11,958 05
1875	10,417 57
1876	15,628 53
1877	15,000 00

which, with legal interest, costs, and penalties thereon, now amounts to more than eighty thousand dollars.

413 4. Your orator further shows that said Horatio Hunnewell, on the 4th day of March, 1878, filed his bill of complaint in this court against the other named respondents to compel the cancellation of said taxes so assessed and levied against said lands and to procure a decree of this court holding and declaring *that* the same to be illegal and void; that on the same day, without the issue of process, the respondent, The Board of County Commissioners of said Boone County, by M. H. Sessions, a solicitor of this court, pretended to appear and file a stipulation consenting to said bill being taken *pro confesso*, and to the entry of a decree in favor of said complainant for the relief prayed, granting a perpetual injunction against the collection of any of said taxes, and declaring the same illegal and void and relieving the said lands from the lien thereof, which said decree was afterwards entered in this court on the — day of ——, 1878. A copy of the said bill filed by said Hunnewell is hereto attached, marked Exhibit "X," and referred to for greater certainty as to the allegations and prayer thereof.

5. Your orator further shows that for the years 1873 and 1874 there were assessors duly elected and qualified in each of the precincts of said Boone county; that it is true, as alleged in the bill

filed by the said Hunnewell, that the board of county commissioners of said county for said years pretended to instruct the said several assessors as therein set forth, but your orator says that said board of county commissioners had no authority in law to give said instructions, and upon information and belief, he says that said assessors, in making their assessment for said year, did not regard or follow said instructions, but proceeded in due form of law to assess and value all lands in said county for said year subject to
414 taxation and did ascertain the fair, true value of the same and did return the same at its true assessable value; that the assessment and valuation by them made of the lands of said railroad company for said years was a fair, true valuation for taxable purposes and was the same as placed upon all other real estate of a similar kind in said county.

Your orator further shows that all of said assessors for said years duly subscribed and took the oath of office prescribed by law, and said oaths were in writing and are now on file in the office of the county clerk of said county. A copy of the oath of one of said assessors for the year 1873 is hereto attached, marked Exhibit "A," and a similar copy of one of said oaths of office for 1874 is also attached, marked Exhibit "B;" that each of the other assessors duly subscribed and took an oath for their terms of office for said years of similar purport to those above designated, and the same are now on file as aforesaid.

Your orator says that said several assessors for said years at the time required by law duly made out their several assessment lists or rolls, including the assessment of said lands, and duly returned the same into the office of the said county clerk and to said board of county commissioners; that there are now no oaths and certificates of said assessors attached to the said assessment list, as required by section 12 of chapter 66 of the General Laws of Nebraska, but your orator, upon information and belief, says that said assessors did take and subscribe said oaths and certificates and did attach the same to their said lists in the manner provided by law, but that said oaths and certificates have been in some manner detached from said lists and mislaid and, after such search as your orators could make before bringing this bill, could not be found.

Your orator says that for said years taxes were duly levied upon said lands of said company so as aforesaid duly assessed
415 in about the amounts set forth in complainant's bill.

6. Your orator further says that for the years 1875, 1876, and 1877 no instructions of any kind were given to the several assessors of said county nor any of them concerning the assessment or valuation of property except as appears from the following extracts from the proceedings of the county commissioners of said county of the dates following:

February 1st, 1875.—On motion, the assessors were furnished the same scale of prices of personal property as for the year 1874.

"February 7. * * * On motion, the clerk was instructed to furnish the necessary assessment and census blanks to the precinct as-

sessors, and to notify the assessors to use their own discretion in regard to the valuation of property."

"February 5th, 1877. * * * The assessors were instructed to sell all the personal property and assess the same at a fair cash valuation and examine each tract of real estate."

That in each precinct of said county for each of said years there was an assessor duly elected and qualified and acting as such; that each of said officers duly subscribed and took an oath of office for each of said years, and that the same are now on file in the office of the county clerk. A true copy of the oath of one of the assessors of said county for each of said years is hereto attached, and that all the other of said oaths so taken, subscribed, and filed are of similar purport thereto. Said copies are marked respectively "C," "D," and "F;" that each of said assessors did in each of said years duly proceed to assess and value all the personal property and real estate in their several precincts in said county, including the said lands of said company, at its real, true, and fair value for purposes of taxation; that in so doing they did not follow any instructions of said board of county commissioners, but proceeded lawfully to ascertain
416 and determine the true and fair value of all of said property and so duly valued and assessed the same. Your orator says that the said lands of said company for said years were in fact valued and assessed at a fair and true valuation and one that corresponded with the valuation of all other property in said county.

7. Your orator further says that each of said assessors for each of said years, at the time required by law, duly made and returned to the office of the county clerk of said county and to the county commissioners thereof a duly prepared assessment list of all the property in his precinct subject to taxation, together with a true and fair valuation of the same; that each of said assessors for each of said years duly subscribed, swore to, and attached to his assessment list an affidavit and certificate such as is required by section 12 of chapter 66 of the General Laws of Nebraska, and the same have ever since been and now are attached thereto and on file in the said county clerk's office. Copies of said affidavits made by one of the said assessors for each of said years are hereto attached, marked respectively Exhibits "G," "H," and "I;" that all of said affidavits for each of said years are substantially of the same tenor and effect as that attached.

Your orator says that said several assessments for said years were regular and valid in all respects; that the same were duly equalized and the taxes duly and legally levied thereon in about the amounts set forth in the complainant's bill.

8. Your orator further shows that the officers of said county for the year 1875 duly and legally assessed and levied a tax of 10 mills on the dollar as a special bridge tax for the purpose of build-
417 ing bridges in said county, amounting to the sum of $1,451.49, upon said lands, and also levied a land road tax of 6 mills upon the dollar valuation, which upon said lands amounted to $1,740.51, and also levied for said years in the several school districts of said county taxes for the payment of interest and principal

of school bonds, which said taxes in said several districts amounted on said lands to $958.23.

Your orator further shows that for the year 1876 there was also duly assessed and levied in said county a land road tax of five mills on each dollar, which on the said lands amounted to the sum of $1,450.00; also a tax in the several school districts for the payment of interest and principal of school bonds, amounting on said lands to the sum of $1,129.25, and also the county officers of said county for said year, to provide a sinking fund for the payment of the principal and interest of the bonds of said county therefor duly issued, assessed and levied a tax of 16½ mills on the dollar, which on the said lands amounted to the sum of $4,442.27.

9. Your orator further says that one-half of the special bridge tax levied for the year 1875, as set forth above, was afterwards duly cancelled and remitted by said board of county commissioners, and there is only a tax of five mills on the dollar valuation now standing against the lands of said company. Your orator submits, under the advice of counsel, that said tax was duly and legally levied; that said board of county commissioners had full power and authority to levy the same and the same is a valid and subsisting lien against all of said lands.

10. Your orator further submits, under the advice of counsel, that the land tax and tax levied for the payment of interest and principal of school bonds, as set forth above, for the years 1875, 1876, and 1877 are valid and legal taxes.

418 The same were duly and regularly levied for said purposes; and your orator submits that said board had full power and authority to levy the same, and that the same are now valid and subsisting liens against all of said real estate.

11. Your orator further shows that the taxes levied for the year 1876 for county sinking funds for county roads, and for the year 1877 for county sinking funds, as set forth above, were legally and regularly levied in all respects; that said county had incurred a large bonded indebtedness, and that it was its legal duty to provide said funds by taxation for the payment of the interest and principal of the same; that said taxes were not excessive; and your orator submits, under the advice of counsel, that said board of county commissioners had jurisdiction and power to levy the same, and that they are valid and subsisting liens against all of said real estate.

12. Your orator says that all of said taxes for said years, as set forth in the complainant's bill, are and have been for a long time due and delinquent; that the same have not been paid nor any part thereof; and your orator submits, under the advice of counsel, that the same, with the interest and penalties thereon as provided by law, are legal and regular in all respects and are valid and subsisting liens upon all of the real estate aforesaid and the said defendant, The Burlington and Missouri River Railroad Company in Nebraska, is in law bound to pay and satisfy the same and ought in equity and good conscience so to do; that said lands have received the benefits of the State and county governments and ought

in law and equity to contribute their just proportion of taxes for the support of same.

13. Your orator further shows that in each of said years from 1873 to 1877, inclusive, the said board of county commissioners
419 at the time and place required by law, duly held a session as a board of equalization for the purpose of correcting all errors both in the listing and assessment of personal property and real estate and in the valuation of the same. Of the sitting of said board for each of said years due and legal notice was given as required by law, and of the session of said board in each of said years the said railroad company had due and legal notice: and your orator submits, under the advice of counsel, that it was the duty of said company and of all persons interested in said lands to appear before said board of equalization in each year and make complaint as to any errors and irregularities in the assessment and valuation of property and of any unlawful assessment thereof; that said company in each of said years failed, neglected, and refused to appear before said board and question the assessment or valuation of said lands, except that for the years 1875, 1876, and 1877 said company caused to be filed with said board of equalization an affidavit for each of said years complaining that the valuation placed upon said lands was too high; that said commissioners refused to allow the claim of said company and decided in each of said years upon said applications that said assessments were not excessive, to which decisions said company never took exceptions or took action to reverse the same, and your orator submits that said company and all other persons are now estopped from contesting in any way the legality or regularity of said assessments.

14. Your crator further shows that in January, 1878, the county commissioners of said Boone county and the county clerk thereof left said county of Boone and went to Lincoln, in the county of Lancaster, Nebraska; that, as your orator is informed and verily believes and he charges the fact to be, they so went at the spe-
420 cial instance and request of said railroad company; that at said Lincoln, on the 30th day of January, 1878, the said county commissioners, pretending at said time and place to act as the board of county commissioners for said Boone county, met with certain agents, attorneys, and officers of the said railroad company and with one certain Adam Smith, at that time a citizen of Chicago, in the State of Illinois, and your orator is informed and verily believes and so charges the fact to be that said parties at said time so met together and, confederating together for the purpose of defrauding your orator and all other citizens and tax-payers of said county, undertook fraudulently and without authority of law whatsoever to enter into certain pretended contracts and said commissioners did sign and deliver to the said company a pretended contract, a copy of which is hereto attached, marked Exhibit "K;" that there was no consideration for said pretended contract; that said commissioners at said time and place acted as individuals and not as a board of county commissioners, and your orator submits, under the

advice of counsel, that said pretended action was and is of no binding or valid effect whatever.

15. Your orator further says that the pretended consideration for said pretended action and for the signing and delivering of said pretended contract was the execution at said time and place of certain documents, of which copies are hereto attached, marked respectively Exhibits "L" and "M;" the precise name or nature in law of which documents your orator, under the advice of counsel, professes himself unable to state, but submits the same to the consideration of the court; but your orator says there is no warrant in law for the execution of any such documents; that said commissioners had no authority to accept the same or become parties thereto
421 and the same conferred no benefits or rights upon said county whatever.

16. Your orator further shows that at said time and place the said commissioners, pretending to act for said county and as officers thereof, and, as your orator is informed and believes and so charges the fact to be, intending to injure and defraud said county out of the taxes legally and justly due it from said railroad company, and to defraud your orator and the tax-payers of said county, signed a writing purporting to be an employment of M. H. Sessions as attorney for the county and pretending to authorize him to appear in court and act for it concerning any litigation brought against said county concerning the legality of said taxes, a copy of which is hereto attached, marked Exhibit "N," but your orator submits to the court, under the advice of counsel, that said commissioners acted as individuals and not as officers of said county; that they had no authority in law to execute said paper for said county or to confer upon said attorney the power and rights therein pretended to be bestowed upon him by said county, and that no authority was in fact conferred upon said attorney to act for said county in any way whatever.

17. Your orator further shows that he is informed and believes and so charges the fact to be, that to induce said commissioners to enter into the fraudulent arrangements aforesaid the said railroad company and said Smith agreed to pay and did pay all the expenses of the said commissioners from Boone county to said Lincoln and return and all their expenses at said city of Lincoln, and that said company and said Smith fraudulently induced said commissioners to pretend to employ said M. H. Sessions as attorney for said county on an agreement that said company and said Smith would pay him for said services, and that said county or said commissioners need not so do; that said Sessions was so engaged by said
422 railroad company and said Smith as an attorney to act for them and in their interest and against the interests of said county, while pretending to act as the attorney thereof, and that his fees and expenses for so doing were agreed by said company and said Smith to be paid by them, and that in all that said Sessions had done pretending to act as attorney and counsel for said county and for the interest thereof he has, as your orator is informed and believes, acted for said company and in its interests, in pursuance

of said fraudulent and illegal arrangement made between said commissioners and said company and Smith as aforesaid.

18. Your orator further says that of the fraudulent arrangements aforesaid the said H. H. Hunnewell had full knowledge and was, by his attorneys, a silent party thereto; that in pursuance of said fraudulent arrangements the said cause was commenced in a collusive, clandestine, and fraudulent manner; that said Sessions brought the said bill to Omaha, together with the said stipulation and a decree, all prepared for entry and filed the same in this court, paying the fees therefor on behalf of said railroad company and said Hunnewell, and endeavored to have said decree entered the same day the bill was filed, for the purpose of preventing any knowledge thereof to come to the ears of any of the tax-payers of said county until after said decree had been entered. Your orator says he is informed and believes and charges the fact to be that said Sessions was acting and did act in said cause under retainer from said railroad company and said Hunnewell or from said Smith and not from said county; that he had no authority whatever in fact or in law to sign the said stipulation; that the same was signed and filed in fraud of the rights of said Boone county and of the tax-payers thereof, and your orator submits, under advice of counsel, that the same is of no effect or force whatever, and that the decree of
423 this court entered in pursuance thereof was so procured by fraud and collusion and is null and void and should be vacated; that the same was a fraud upon this honorable court and greatly prejudicial to your orator and the tax-payers of said Boone county.

19. Your orator further shows that said county of Boone now has an outstanding indebtedness of about fifty thousand dollars; that the several school districts of said county have large outstanding indebtedness, the amounts of which your orator cannot now state; that said amount of taxes set forth in complainant's bill, with interest and penalties thereon, when collected and paid into the treasury of said county are in law applicable for the payment of said indebtedness and would nearly or quite pay and cancel the same; that your orator and all other tax-payers of said county have during said years paid into the treasury the taxes levied against their personal property and real estate, and the same *has* been applied to pay the expenses of the county government and to pay off the indebtedness thereof; that if said taxes upon said lands are, as they ought to be, paid and applied upon said indebtedness and the same is thereby cancelled and discharged, your orator and the other tax-payers of said county will not be compelled to pay taxes for the payment of any part of said indebtedness except what has already been levied against them; but if the said decree so fraudulently obtained stands, then your orator's lands and all other lands of tax-payers in said county will be holden for the payment and satisfaction of said indebtedness and will have to pay large and unjust taxes for the payment of same; that there is no way of paying off and discharging said indebtedness except by the levying and collecting taxes

each year upon and from the lands of your orator and of the other tax-payers of said county.

424 20. Your orator further says that said indebtedness is at least fifteen per cent. of the entire assessed valuation of said county; that it is unjust and inequitable that your orator and the tax-payers of said county similarly situated should be compelled to pay said indebtedness, and that the lands of said railroad should be discharged therefrom; that any arrangement to that effect, such as has been attempted by the fraud of said several respondents, would greatly wrong and injure your orator and the tax-payers of said county; that thereby the lands of your orator and the said tax-payers in said county would be greatly reduced in value and would be and become nearly or quite worthless.

21. Your orator further shows that at a mass meeting of the tax-payers of said county lately held the said pretended action of the said county commissioners was expressly disaffirmed and your orator was authorized by said tax-payers to bring this his bill as well for them as for himself.

22. Your orator further shows that if said decree is permitted to stand as the judgment of the court, although so obtained by the collusion and fraudulent confederating together of the said several respondents, as well as of the said Adam Smith, who pretends to have some interest in said taxes and in said decree—the exact nature of which is unknown to your orator and he cannot now state—your orator is without remedy unless permitted to maintain his bill to set aside the same.

23. That the matter in dispute herein is more than five hundred dollars, exclusive of costs.

24. That if said decree stands, then it will occasion a multiplicity of suits by the several tax-payers of said county to recover back the taxes paid by them levied in the same manner and for the same years as the ones above described, and many of which have

425 been paid by said tax-payers under protest.

25. Your orator represents that Horatio H. Hunnewell, who was complainant in said bill, is a stockholder of the said railroad company, and as such filed said bill for relief, but your orator, upon information and belief, alleges and avers that said railroad company was the real party complainant in said case and, fraudulently conspired together with the said board of county commissioners and with said Sessions, caused said bill to be brought in the name of said Hunnewell for the sole and only purpose of obtaining jurisdiction for said bill in this court, all of the other parties thereto being citizens of the State of Nebraska.

26. Your orator further refers to the proceedings and records of this court in said case mentioned above to more fully show, reference thereto being had, the nature of said proceedings, the facts alleged in the bill filed therein, and the various allegations concerning the same, as herein made.

27. Your orator further shows that he had well hoped that the said respondents, well knowing the decree aforesaid was so fraudulently obtained, would not have insisted upon the same, but that

said company would have paid the full amount of said taxes as they in equity ought to do, but now so it is that said respondents pretend that said decree was fairly and properly obtained, and that all of said lands are relieved and freed from the lien of said taxes, and that the same are cancelled and adjudged to be null and void, and the said company still refuses to pay the same or any part thereof.

All which doings, actings, and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator in the premises.

426 In tender consideration whereof and forasmuch as your orator is remediless in the premises at and by the strict rule of the common law and is relievable only in a court of equity; where matters of this nature are cognizable and relievable—

To the end thereof that your orator, as well as all others similarly situated, may have that relief which they can only obtain in a court of equity, and that the defendants may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by the complainant;

And that the said decree declaring the said taxes illegal and void and perpetually enjoining and restraining the collection of them and all of them may, for the reasons and under the circumstances aforesaid, be set aside by this honorable court and declared to be fraudulent and void, and that said taxes and all of them may be examined by the court and declared valid and regular and subsisting liens upon the real estate described herein, and that if the court shall find any of said taxes illegal and void the defendant, The Burlington and Missouri River Railroad Company in Nebraska, may, by the decree of the court, be ordered to pay into court for the use and benefit of said Boone county such amount of taxes, with legal interest and penalties thereon, as may by the court be found to be valid and legal as a condition precedent to the granting of any relief in favor of said company or said Hunnewell as against the lien or collection of said taxes; that the defendants and each of them be perpetually enjoined from compromising, cancelling, or remitting, except upon full payment thereof, any of said taxes so found by the court to be valid and legal, and for such other or further relief as the nature of this case may require and to your honors seem meet—

427 May it please your honors to grant unto your orator a writ of subpœna to be directed to the said Horatio H. Hunnewell, the Burlington and Missouri River Railroad in Nebraska, the Board of County Commissioners of Boone county, Nebraska, and S. P. Bollman, treasurer of said county, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answers make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to your honors shall seem agreeable to equity and good conscience.

And your orator will ever pray, &c.

JOHN M. THURSTON,
Solicitor for Complainant.

UNITED STATES OF AMERICA,
District and State of Nebraska, Douglas County, } ss:

LORAN CLARK, being duly sworn, says he is the complainant in the foregoing bill of complaint against the respondents therein named; that he has heard read the above bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

LORAN CLARK.

Subscribed in my presence and sworn to before me this 4th day of October, 1873.

[SEAL.] THOMAS S. McMURRAY,
Notary Public.

428 EXHIBIT "A."

Part of sec.	Sec.	Tp.	R.	Acres.
All	5	18	5 W.	
All	7	18	5	
All	1	19	5	
E ½	3	19	5	
S. W. ¼	3	19	5	
E. ½ N. W. ¼	3	19	5	
E. ½	5	19	5	
W. ½ S. W. ¼	7	19	5	
W. ½	9	19	5	
All	11	19	5	
All	13	19	5	
All	15	19	5	
All	19	19	5	
S. W. ¼	21	19	5	
All	23	19	5	
All	25	19	5	
All	29	19	5	
All	31	19	5	
S. ½	33	19	5	
N. E. ¼	35	19	5	
E. ½ N. W. ¼	35	19	5	
All	1	20	5	
All	3	20	5	
All	5	20	5	
All	7	20	5	
All	9	20	5	
All	11	20	5	
All	13	20	5	
All	15	20	5	
All	17	20	5	
All	19	20	5	
All	21	20	5	
All	23	20	5	
All	25	20	5	
All	27	20	5	
All	1	22	5	
All	3	22	5	
All	5	22	5	
All	7	22	5	
All	9	22	5	
All	11	22	5	
All	13	22	5	
All	15	22	5	
All	17	22	5	
All	19	22	5	
All	21	22	5	
All	24	22	5	
All	25	22	5	
All	27	22	5	
All	29	22	5	
All	31	22	5	
All	33	22	5	
All	35	22	5	
All	1	18	6	
429 All	3	18	6 W.	
All	5	18	6	

Part of sec.	Sec	Tp.	R.	Acres.
N. ½	29	20	5 W.	
W. ½ S. E. ¼	29	20	5 W.	
S. W. ¼	29	20	5	
N. ½	31	20	3	
N. ½ S. E. ¼	31	20	5	
N. ½ S. W. ¼	31	20	5	
E. ½	33	20	5	
S. W. ¼	33	20	5	
All	35	20	5	
All	1	21	5	
All	3	21	5	
All	5	21	5	
All	7	21	5	
All	9	21	5	
E ½	11	21	5	
E. ½ S. W. ¼	11	21	5	
N. W. ¼ S. W. ¼	11	21	5	
N. W. ¼	11	21	5	
S. ½ S. W. ¼	13	21	5	
N. ½ N. W. ¼	13	21	5	
N. ½ N. E. ¼	15	21	5	
S. W. ¼ N. E. ¼	15	21	5	
S. ½	15	21	5	
N. W. ¼	15	21	5	
All	17	21	5	
All	19	21	5	
All	21	21	5	
All	23	21	5	
All	25	21	5	
All	27	21	5	
All	29	21	5	
All	31	21	5	
All	33	21	5	
All	35	21	5	
All	3	19	6	
All	5	19	6	
All	7	19	6	
All	9	19	6	
All	11	19	6	
All	13	19	6	
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All	25	19	6	
All	27	19	6	
All	29	19	6	
All	31	19	6	
All	33	19	6	
All	35	19	6	
All	1	20	6	
All	3	20	6	
All	5	20	6	
All	9	20	6	
All	11	20	6	

EXHIBIT "A"—Continued.

Part of sec.	Sec.	Tp.	R.	Acres.
All	7	18	6	
All	9	18	6	
All	11	18	6	
All	13	18	6	
All	15	18	6	
All	17	18	6	
All	19	18	6	
All	21	18	6	
All	23	18	6	
Lot No. 1	29	18	6	
Lot No. 2	29	18	6	
N. ½ N. E. ¼	1	19	6	
S. E. ¼ N. E. ¼	1	19	6	
E. ½ S. E. ¼	1	19	6	
S. W. ¼ S. E. ¼	1	19	6	
S. ½ S. W. ¼	1	19	6	
S. W. ¼	27	20	6	
All	29	20	6	
All	31	20	6	
All	33	20	6	
S. W. ¼	35	20	6	
All	1	21	6	
All	3	21	6	
All	5	21	6	
All	7	21	6	
All	9	21	6	
All	11	21	6	
All	13	21	6	
All	15	21	6	
All	17	21	6	
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All	33	21	6	
All	35	21	6	
All	1	22	6	
All	3	22	6	
All	5	22	6	
All	7	22	6	
All	9	22	6	
All	11	22	6	
All	13	22	6	
All	15	22	6	
All	17	22	6	
All	19	22	6	
All	21	22	6	
All	23	22	6	
All	25	19	7	
All	27	19	7	
All	29	19	7	
All	31	19	7	
All	33	19	7	
430 All	35	19	7 W.	
E. ½ N. W. ¼	1	20	7	
All	3	20	7	
All	5	20	7	
All	7	20	7	
All	9	20	7	
All	11	20	7	
S. W. ¼	13	20	7	
All	15	20	7	
All	17	20	7	
"	19	20	7	
All	21	20	7	
All	23	20	7	
All	25	20	7	
All	27	20	7	
All	29	20	7	
All	31	20	7	
All	33	20	7	
All	35	20	7	
All	1	21	7	
All	3	21	7	
All	5	21	7	
All	7	21	7	
All	9	21	7	
N. ½	11	31	7	
E. ½ S. E. ¼	11	21	7	

Part of sec.	Sec.	Tp.	R.	Acres.
All	13	20	6	
N. ½ N. E. ¼	15	20	6	
S. E. ¼ N. E. ¼	15	20	6 W.	
N. E. ¼ S. E. ¼	15	20	6	
S. ½ S. E. ¼	19	20	6	
S. ½ S. W. ¼	19	20	6	
N. W. ¼ S. W. ¼	19	20	6	
W. ½ N. W. ¼	19	20	6	
N. W. ¼	21	20	6	
N. ½ N. E. ¼	23	20	6	
S. E. ¼ N. E. ¼	23	20	6	
N. E. ¼ S. E. ¼	23	20	6	
E. ½	25	20	6	
S. ½ S. W. ¼	25	20	6	
E. ½ N. W. ¼	25	20	6	
All	25	22	6	
All	27	22	6	
All	29	22	6	
All	31	22	6	
All	33	22	6	
All	35	22	6	
All	1	18	7	
All	3	18	7	
All	5	18	7	
All	7	18	7	
All	9	19	7	
All	11	18	7	
All	13	18	7	
All	15	18	7	
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All	23	21	7	
All	25	21	7	
All	27	21	7	
All	29	21	7	
All	31	21	7	
All	33	21	7	
W. ½	35	21	7	
All	1	22	7	
All	3	22	7	
All	5	22	7	
All	7	22	7	
All	9	22	7	
All	11	22	7	
All	13	22	7	
All	15	22	7	
All	17	22	7	
All	19	22	7	
All	21	22	7	
All	23	22	7	
All	25	22	7	
All	27	22	7	
All	29	22	7	
All	31	22	7	
All	33	22	7	
All	35	22	7	
All sec. Lot 1	7	16	8	47.56
All sec. Lot 2	7	16	8	46.68
All sec. W. ½	7	16	8	
All sec. Lot No. 1	19	16	8	43.55
All sec. Lot No. 2	19	16	8	42.09
All sec. W. ½	19	16	8	

EXHIBIT "A"—Continued.

Part of section.	Sec.	Tp.	R.	Acres.
E. ½ S. W. ¼	11	21	7	
All	13	21	7	
All	15	21	7	
All	17	21	7	23.23
All	19	21	7	23.93
All section. Lot No. 1	7	17	8	24.57
All section. Lot No. 2	7	17	8	25.27
All section. Lot No. 3	7	17	8	
All section. Lot No. 4	7	17	8	
All section. W. ½ N. E. ¼	7	17	8	
All section. W. ½ S. E. ¼	7	17	8	
W. ½	7	17	8	29.11
W. ½	7	17	8	29.31
All section. Lot No. 1	19	17	8 W.	29.49
All section. Lot No. 2	19	17	8	29.69
All section. Lot No. 3	19	17	8	
All section. Lot No. 4	19	17	8	
All section. W. ½ N. E. ¼	19	17	8	
All section. W. ½ S. E. ¼	19	17	8	31.60
W. ½	19	17	8	31.37
All section. Lot No. 1	31	17	8	31.13
All section. Lot No. 2	31	17	8	30.90
All section. Lot No. 3	31	17	8	
All section. Lot No. 4	31	17	8	
All section. W. ½ E. ½	31	17	8	
W. ½	31	17	8	
All	1	18	8	
All	3	18	8	
All	5	18	8	
All	7	18	8	
All	9	18	8	
All	11	18	8	
All	13	18	8	
431 All	15	18	8	
All	17	18	8	
All	19	18	8	
All	21	18	8	
All	23	18	8	
All	25	18	8	
All	27	18	8	
All	29	18	8	
All	31	18	8	
All	33	18	8	
All	35	18	8	

Part of section.	Sec.	Tp.	R.	Acres.
All sec. Lot No. 1	31	16	8	39.08
All sec. Lot No. 2	31	16	8	36.52
All sec. W. ½	31	16	8	
All	1	19	8 W.	
All	3	19	8 W.	
All	5	19	8	
All	7	19	8	
All	9	19	8	
All	11	19	8	
"	13	19	8	
All	15	19	8	
All	17	19	8	
All	19	19	8	
All	21	19	8	
All	23	19	8	
All	25	19	8	
All	27	19	8	
All	29	19	8	
All	31	19	8	
All	33	19	8	
All	35	19	8	
All	1	20	8	
All	3	20	8	
All	5	20	8	
All	7	20	8	
All	9	20	8	
All	11	20	8	
All	13	20	8	
All	15	20	8	
All	17	20	8	
All	19	20	8	
All	21	20	8	
All	23	20	8	
All	25	20	8	
All	27	20	8	
All	29	20	8	
All	31	20	8	
All	33	20	8	
All	35	20	8	

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Watson B. Smith, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the annexed copy of schedules attached to bill in case of H. H. Hunnewell *vs.* B'd Co. Com'rs of Boone County with the original on file in this office, and the same is a correct transcript thereof and of the whole of said original.

In testimony whereof I have caused the seal of said court to be affixed, at the city of Omaha, in said district, this 27th day of January, 1879.

[SEAL.] WATSON B. SMITH, *Clerk.*

EXHIBIT "A."

Assessment of 1873. *Oath of Office.*

STATE OF NEBRASKA, *Boone County,* } *ss:*

I, Albert Dresser, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of

Nebraska, and faithfully and impartially perform the duties of the office of assessor as provided by the condition of the bond above written, according to law and the best of my ability, so help me God.

(Signed) ALBERT DRESSER.

Subscribed and sworn to by Albert Dresser before me this 23d day of October, A. D. 1882.

WILLIAM J. NELSON,
County Clerk.

Endorsed: Oath of office. 1873. Albert Dresser, assessor Manchester precinct.

EXHIBIT "B."

(*Ashland Precinct.*)

432 STATE OF NEBRASKA, } ss:
Boone County, }

I, William Weitzel, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Nebraska, and faithfully and impartially perform the duties of the office of assessor as provided by the condition of the bond above written, according to law and the best of my ability, so help me God.

(Signed) WILLIAM WEITZEL.

Subscribed and sworn to by William Weitzel before me this 5th day of December, A. D. 1873.

JOHN PETERS,
County Clerk.

Endorsed: Oath of office of William Weitzel, assessor for 1874, Ashland precinct.

EXHIBIT "C."

Assessment of 1875. *W. S. Long, Assessor Beaver Precinct.*

STATE OF NEBRASKA, } ss:
Boone County, }

I, W. S. Long, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Nebraska, and faithfully and impartially perform the duties of the office of assessor as provided by the condition of the bond above written, according to law and the best of my ability, so help me God.

(Signed) W. S. LONG.

Subscribed and sworn to by W. S. Long before me this 7th day of December, A. D. 1874.

JOHN PETERS,
County Clerk.

Endorsed: Assessment of 1875. Oath of office W. S. Long, assessor Beaver precinct.

EXHIBIT "D."

Assessment of 1876, *Ashland Precinct.*

STATE OF NEBRASKA, } *ss:*
Boone County, }

433 I, William Weitzel, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Nebraska, and faithfully and impartially perform the duties of assessor as provided by the conditions of the bond above written, according to law and the best of my ability, so help me God.

(Signed) WM. WEITZEL.

Subscribed and sworn to by Wm. Weitzel before me this 4th day of Jan'y, A. D. 1876.

JOHN PETERS,
County Clerk.

Endorsed: Ashland precinct, 1876. Wm. Weitzel, assessor. Oath of office.

EXHIBIT "F."

Assessment of 1877, *Shell Creek Precinct.*

STATE OF NEBRASKA, } *ss:*
Boone County, }

I, H. Funrue, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Nebraska, and faithfully and impartially perform the duties of the office of assessor as provided by the condition of the bond above written, according to law and the best of my ability, so help me God.

(Signed) H. FUNRUE.

Subscribed and sworn to by H. Funrue before me this 23rd day of Dec., A. D. 1876.

JOHN PETERS,
County Clerk.

Endorsed: Assessment of 1877, Shell Creek precinct. H. Funrue, assessor.

EXHIBIT "G."

I, N. C. Kilborn, precinct assessor in and for Manchester precinct, in Boone county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made

and verified by the oath of the person required to list the
434 same, is hereby truly returned as set forth in such statement;
that in every case where I have been required to ascertain the amount of value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above return, and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

(Signed) N. C. KILBURN, *Assessor.*

Subscribed and sworn to before me this 10th day of April, 1875.

JOHN PETERS,
County Clerk.

Endorsed: Assessment of 1875. N. C. Kilburn, assessor Manchester precinct.

EXHIBIT "H."

Assessor's Oath.

THE STATE OF NEBRASKA, }
Boone County, } *ss:*

I, H. W. Lapping, precinct assessor in and for Beaver precinct, in Boone county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of any property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above return; and that in no case have I knowingly omitted to demand of any person of whom I was
required to make it a statement of the amount and value of
435 his property which he was required by law to list, nor have
I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

(Signed) H. W. LAPPING, *Assessor.*

Subscribed in my presence and sworn to before me this 8th day of April, A. D. 1876.

JOHN PETERS,
County Clerk.

Endorsed: Assessment of 1876. H. W. Lapping, assessor Beaver precinct.

EXHIBIT "I."

Assessor's Oath.

THE STATE OF NEBRASKA, } ss:
Boone County, }

I, J. Widaman, precinct assessor in and for Oakland precinct, in Boone county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified on oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns, and that in no case have I knowingly omitted to demand of any person, of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

(Signed) J. WIDAMAN, *Assessor.*

[SEAL.] Subscribed in my presence and sworn to before me this 2d day of April, A. D. 1877.

JOHN PETERS,
County Clerk.

Endorsement: Assessment of 1877. J. Widaman, assessor Oakland precinct.

436 Instructions given to assessors at a meeting of the Board of Commissioners of Boone County, Neb., held February 1st 1875, were in substance as follows:

"On motion, the assessors were furnished the same scale of prices of personal property as for the year 1874," which is all the instructions given relating to assessment of property for the year.

Instructions given to assessors at a meeting of the Board of County Commissioners of Boone County, Nebraska, held on the 7th day of February, 1876, were in substance as follows:

"On motion, the clerk was instructed to furnish the necessary assessment and census blanks to the precinct assessors and to notify the assessors to use their own discretion in regard to the valuation of property."

At a meeting of the Board of County Commissioners of Boone County, Nebraska, held the 5th day of February, 1877, the following appears of record;

"The assessors were instructed to see all the personal property and assess the same at a fair cash valuation and examine each tract of real estate."

At a meeting of the Board of County Commissioners of Boone County, Nebraska, held March 24th, 1876, the following appears of record:

"On motion, the treasurer was instructed to collect only one-half of the special bridge tax charged on the tax list of 1875," as that is all the law allows."

I hereby certify that the following-described papers hereto attached are correct copies taken from the records of the clerk's office of Boone county, Nebraska: The oath of office of Albert Dresser, assessor for 1873, sworn October 23d, 1872; oath of office of William Weitzel, assessor for 1874, sworn December 5th, 1873; oath of office of W. S. Long, assessor for 1875, sworn Dec. 7th, 1874; oath of office of Wm. Weitzel, assessor for 1876, sworn to July 4th,
437 1876; oath of office of H. Funrue, assessor for 1877, sworn December 23d, 1876; that all assessors in the county subscribed to the same oath in those years. The following oaths were attached to the assessment returns of the assessors as represented, and that the same oath was subscribed and taken by and attached to all the returns of all the assessors in Boone county, Nebraska, for the same years: Oath of N. C. Kilburn, assessor for Manchester precinct, 1875; oath of H. W. Lapping, assessor for Beaver precinct, 1876, and oath of J. Widaman, assessor for Oakland precinct in 1877; instructions to assessors February 1st, 1875; instructions to assessors February 7th, 1876; instructions to assessors February 5th, 1877, and the reduction of special bridge tax March 24th, 1876.

Witness my hand and official seal, at Albion, Neb., this 30th day of March, A. D. 1878.

[SEAL.] JOHN PETERS,
County Clerk.

(Copy.)

LINCOLN, NEBRASKA, *January 30th*, 1878.

Memorandum of an agreement made by and between the Burlington and Missouri River Railroad Company in Nebraska, first party, and the County of Boone, Nebraska, by its commissioners, of the second part, and the Nebraska Land and Live Stock Company, of the third part.

Whereas parties of the 1st and 3d parts have this day entered into an agreement and bond for the performance of certain obligations, conditioned on the absolute release by the said party of all illegal taxes levied upon the lands for the first and third parties in the county of Boone, Nebraska, for the years 1873 and 1877, inclusive: Now, therefore, the said party of the second part hereby agrees, by its commissioners and by its authorized attorney, M. H. Sessions, to enter into the necessary stipulation and to have decree of court entered up in the circuit court of the United States for the dis-
438 trict of Nebraska eradicating the whole of the taxes now charged against the lands of the first and third parties for

the above years, all of said taxes having been examined and agreed upon as being illegal and void.

(Signed) THOMAS I. WILKINSON, *Chairman*,
EDWIN BROADBENT,
T. H. BOWMAN, *Co. Com'rs.*
M. H. SESSIONS,
Attorney for Boone County.

Attest: JOHN PETERS,
County Clerk.

(Copy.)

LINCOLN, NEBRASKA, *January 30th*, 1878.

Know all men by these presents that a certain contract bearing date July 17th, 1877, having been made by the county of Boone, through its commissioners, and one Adam Smith, of Chicago, Illinois, wherein the second party agreed to make the purchase of certain lands of the Burlington and Missouri River Railroad in Nebraska and to pay all legal taxes assessed thereon for the year 1878 and thereafter and to make certain improvements in the county of Boone, in consideration of which the county commissioners of said county agreed at some future day to take the necessary legal steps for the wiping out of all the illegal taxes claimed to be due upon the lands of the said Burlington and Missouri River Railroad Company in Nebraska for the years 1873, 1874, 1875, 1876, and 1877;

And whereas the second party has partly completed the improvements agreed upon and has entered into a bond for the completion of the same;

And whereas the second party is now prepared to enter into the necessary obligations for the payment promptly hereafter of the legal taxes;

And whereas the county commissioners have this day taken
439 the necessary legal action for the wiping out of all the illegal taxes claimed to be due for the said years above mentioned;

And whereas the said Adam Smith has transferred his rights to the Nebraska Land and Live Stock Company, which said company has assumed all duties and obligations of said Adam Smith:

Therefore it is hereby agreed and the Nebraska Land and Live Stock Company binds itself in the sum of ten thousand dollars ($10,000) to pay all legal taxes for the years 1878 to 1882, inclusive, which may be levied upon the lands purchased by the said Nebraska Land and Live Stock Company from the said railroad company in the county of Boone, Nebraska, and the said Nebraska Land and Live Stock Company hereby binds itself under the same penalty as above stated to pay all taxes which may be levied upon the lands of the Burlington and Missouri River Railroad Company in the said county of Boone, Nebraska, for the said years 1878 to 1882, inclusive, should said railroad company fail to pay the said taxes.

Signed) NEBRASKA LAND AND LIVE STOCK COMPANY,
By ADAM SMITH, *Pres't.*

The Burlington and Missouri River Railroad Company in Nebraska binds itself in the sum of ten thousand dollars ($10,000) to pay all legal taxes for the years 1878 to 1882, inclusive, upon all its lands in Boone county, Nebraska, which have not been absolutely sold and deeded to the Nebraska Land and Live Stock Company or to other parties.

(Signed) BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA,
A. E. TOUZALIN, *Land Commissioner.*

I, John R. Clark, of Lincoln, Nebroska, do here- bind myself in the sum of ten thousand ($10,000) dollars for the performance
440 by the Burlington & Missouri River Railroad Company in Nebraska of the above obligation as entered into by the said railroad company should said railroad company fail to carry out the obligation as therein stated.

(Signed) JOHN R. CLARK.

EXHIBIT "M."

(Copy.)

In pursuance of a certain contract entered into by Adam Smith, of Chicago, Illinois, with the county of Boone, Nebraska, for the completing of a certain road from Albion, the county-seat of said county, to a point on the Union Pacific railroad, said road having now been partly completed:

Now, therefore, the Nebraska Land and Live Stock Company doth by this bond bind and obligate itself in the sum of ten thousand ($10,000) dollars to complete the said road, as shown forth in the said agreement with the said Boone county, within the time of the said contract entered into by the said Adam Smith, the intention of this bond being to obligate the said Nebraska Land and Live Stock Company in the sum of ten thousand dollars ($10,000) for the full performance by the said Adam Smith of the agreement made with the said county of Boone, Nebraska.

January 30th, 1878.

(Signed) NEBRASKA LAND AND LIVE STOCK CO.,
By ADAM SMITH, *Pres't.*

EXHIBIT "N."

(Copy.)

That whereas the taxes on the lands of the B. &. M. R. R. Co. in Nebraska in Boone county, both State, county, and shool taxes, are unpaid for the years 1873, 1874, 1875, 1876, and 1877; and whereas the said company disputes the legality of said taxes and it is necessary to test their legality:

Therefore be it resolved that the board employ M. H. Sessions as its attorney to defend any suit that may be brought against
441 the county or to bring any suit he may deem best to test the legality of said taxes, and if he deem that any of said taxes

are illegal he may make such compromise in the matter with the company as he may deem best for the interests of the county in the premises; and the said M. H. Sessions is hereby authorized to enter an appearance for the county of Boone, Nebraska, in any suits which may be brought by the said Burlington and Missouri River Railroad Company in Nebraska or by any stockholder thereof, and to take action as directed by said commissioners, and to waive issuance and service of a subpœna in the case.

(Signed) THOMAS T. WILKINS, *Chairman*,
EDWIN BROADBENT,
T. H. BOWMAN, *Co. Com'rs.*

Lincoln, Nebraska, Jan'y 30th, 1878.

Attest: JOHN PETERS,
County Clerk.

EXHIBIT "X."

In Equity.

To the honorable judges of the United States circuit court, district of Nebraska:

Horatio H. Hunnewell, of the city of Boston, in the State of Massachusetts, brings this bill, as well on his own behalf as on behalf of all others similarly situated, against the Burlington and Missouri River Railroad Company in Nebraska, the Board of County Commissioners of Boone County, and S. P. Bollman, treasurer of said county; and thereupon your orator complains and says:

The said railroad company is and for six years and more last past has been a corporation organized under the laws of Nebraska, with full power to build the railroad hereinafter mentioned.

442 By the act of Congress approved on the first day of July, 1882, entitled An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific, and to secure to the Government the use of the same for postal, military, and other purposes, the Union Pacific Railroad Company was authorized to build a railroad from the 100th meridian west to California, and also another road from the Missouri river to said 100th meridian, at which 100th meridian said two roads were to form a junction, and to aid the said work every odd-numbered section of land not otherwise disposed of, to the amount of five alternate sections per mile of said road and within the limits of ten miles thereof, was granted to said company.

By an act amendatory thereof, passed on the 2d day of July, 1864, the Burlington and Missouri River Railroad Company was authorized to extend its road in Iowa from the point at which the same should strike the Missouri river, through the then Territory of Nebraska, to a point or junction north with the said Union Pacific railroad not further west than the said 100th meridian, and every alternate odd-numbered section of land not otherwise disposed of, to the amount of ten sections per mile on each side of said road, on

the line thereof, was granted to the said company; and said company, by proper proceedings in that behalf, in pursuance of the requirements of said act, secured the said patent, and afterwards, under and by authority of Congress, assigned the said grant and all its rights, privileges, and franchises to build said road to said defendant company.

The said Union Pacific Railroad Company commenced the construction of its road from a point on the Missouri river in section 10, township 15, range 13, the same having been duly fixed in that behalf by the President of the United States, on or about the 1st day of
443 January, 1864, and constructed the same to 100th meridian by the first day of July, 1867, and secured the acceptance thereof by the proper officers of the Government, as in the act first above entitled required, and has performed such other acts and things as in the two several acts of Congress above mentioned required.

The said defendant railroad company about the 4th day of July, 1869, commenced the construction of its road from a point in section 18, township 12, range 14, at which the said Iowa Company's road struck the Missouri river, and continued the said work so that on the 4th day of November, 1872, it completed the same for a distance of two hundred miles to a point of junction on the said Union Pacific railroad.

On the 15th day of July, 1865, it established the line of its road and filed a map thereof with the Secretary of the Interior. Afterwards the line of a part of said road was for a short distance changed by authority of Congress, but in nowise so as to affect the extent or limits of said grant, and the said work was duly accepted and approved by the proper officers of the Government, so that it became entitled to the lands so as aforesaid granted to it.

The act above referred to, approved on the 2d day of July, 1864, so far amended the act first above entitled as to enlarge the grant to the Union Pacific Railroad Company from five to ten sections per mile on each side of its road and within the limits of twenty miles thereof for the reach of road extending west from the said 100th meridian. It so happened that the line of the said Union Pacific Railroad Company's road from the Missouri river to the said 100th meridian and the line of said defendant's road were so near each other, that a large part of the lands granted to said defendant company, being within twenty miles of its line and on the north thereof, was within the tract of land which was more than
444 ten and less than twenty miles distant from said Union Pacific Railroad Company's road, and besides such lands in the said defendant company's grant there were also large bodies of land disposed of by Congress before the said grant took effect.

About the years 1867 and 1868 the question of the rights of the said two railroad companies respectively to the tracts of land more than ten and less than twenty miles from the Union Pacific Railroad Company's line was agitated by them in the land department of the Government, and by the officers thereof it was held and determined that the aforesaid amendment of the first above entitled

act extended to the grant of the aforesaid Union Pacific Railroad Company made in aid of its road from the Missouri river to the said meridian (100th), so that said company was entitled, in preference to said defendant railroad company, to all lands which were every alternate odd-numbered section on each side of said road within the limits of twenty miles; and in pursuance of such determination the said officers set off to and issued certificates for all such lands, being all the lands undisposed of and in the odd-numbered sections which were within the limits of twenty miles on the north and on the south of said Union Pacific Railroad Company's line, and so it happened that the lands undisposed of and not so awarded to the said Union Pacific Railroad Company which were within twenty miles of said defendant company's line were insufficient to answer the grant to it to the amount of the ten alternate sections per mile on each side of its road, and such deficiency amounted to one million two hundred thousand acres of land.

In consequence of said deficiency and upon certain days in the year 1872 the officers of the land department of the Government set off to the said defendant company undisposed of lands of the
445 Government to the amount of about one million two hundred thousand acres to supply the said deficiency, a part of which lands north of the line north of said Union Pacific Railroad Company's road, and during said year patents were issued therefor to the said defendant company. A part of said lands are within the said county of Boone and are particularly described in Schedule "A" attached to the original bill of your orator.

Your orator further represents that there was no assessment of the said real estate of said railroad company for the year A. D. 1873; that the persons who pretended to act as assessors in the various precincts of said county do not go upon the said real estate to assess the same or ascertain the value of any of the tracts thereof, but followed the instructions of the board of county commissioners of said county, made by said board on the 31st day of January, A. D. 1873, at a meeting of said board then held, which said instructions to said assessors were in substance as follows:

"The tax list was then taken up and the assessors directed to conform to the following rates: Prairie lands, from $3 to $4 per acre; timber lands, from $10 to $15 per acre."

* * * * * * *

That there was no assessment of any property made by any of the said assessors for said year, but that the said assessors did attempt to follow the instructions of the said county commissioners; but your orator avers the truth to be said assessors never made any assessment at all for said years, nor did any of them make or attach to their assessment-rolls or assessment lists the oath and certificate required by section 12 of chapter 66 of the General Laws of Nebraska, nor did either of the said assessors ever take and subscribe an oath such as is certified to by the officers administering it, as is required by said section of said chapter.

That in fact the said assessors never made any assessments
446 whatever of the said lands of the said railroad for said year 1873, yet the clerk of said county did pretend that an assessment had been made of said lands and did make out a list and did charge the taxes which the county commissioners of said county pretended to levy against said lands of said railroad company, the amount in said county altogether of the sum of fifteen thousand six hundred and sixty-three and $\frac{3}{100}$ ($15,663.03) dollars.

Your orator further avers that the county commissioners did pretend to make the following levy:

"By virtue of the requirements of the law, the board proceeded to levy the taxes for the year 1873.

State general fund, 2½ mills.
State sinking fund, 1 mill.
" school " 2 mills.
" university fund, ¼ mill.
" penitentiary " ½ "
County tax levied by the commissioners as follows:
County general fund, 6 mills.
" sinking " 2½ mills.
Land road tax, $4 per quarter section.
Special bridge tax, 2½ mills " " "

That of said levy there is charged against the property or lands of the said railroad company by the clerk of said county of Boone taxes to the amount of fifteen thousand six hundred and sixty-three and $\frac{3}{100}$ ($15,663.03) dollars.

Your orator submits, under advice of counsel, that said assessment *is* made or pretended to be made as above set forth is void and no assessment, and that said county commissioners had no power or jurisdiction to make the said levy, and that said taxes are null and void and of no effect.

Your orator further represents that there was no assessment of the said real estate of said railroad company for the year 1874, as
447 is required by law; that the persons who pretended to act as assessors in the various precincts of said county did not go upon the said real estate to assess the same nor ascertain the value of any of the tracts thereof, but followed the instructions of the board of county commissioners of said county made by said board on the 2d day of February, 1874, at a meeting of said board then held, which said instructions to said assessors were in substance as follows:

"The tax list was then taken up and the assessors directed to conform to the following rate:

"Prairie lands assessed at from $1.25 to $4 per acre.

"Horses, mules, asses, &c." * * *

That the said assessors did attempt to follow the instructions of the said county commissioners, but your orator avers the truth to be said assessors never made any assessment at all for said year, nor did any of them attach to the assessment rolls or assessment lists the oath and certificate required by section 12 of chapter 66 of the General Laws of Nebraska.

Nor did either of said assessors ever take and subscribe an oath such as is certified to by the officer administering it, as is required by said section of said chapter.

That in fact the said assessors never made any assessment whatever of the said lands of the said railroad company for the said year 1874, yet the clerk of said county of Boone did pretend that an assessment had been made of the lands and did make out a list and did charge the taxes which the county commissioners of said county pretended to levy against said lands of said railroad company. The amount of said county altogether is the sum of eleven thousand nine hundred and fifty-eight & $\frac{5}{100}$ ($11,958.05) dollars.

Your orator further avers that the county commissioners did pretend to make the following levy: * * *

"The tax levy of 1874 was placed on county general fund
448 6 mills on the dollar; sinking fund, two and one-half mills on the dollar; land road fund, $4.00 per quarter section, for State purposes, according to the statute's rates."

That of said levy there is charged against the property or lands of said railroad company by the clerk of said county of Boone taxes to the amount of eleven thousand nine hundred and fifty-eight and $\frac{5}{100}$ ($11,958.05) dollars.

Your orator submits, under advice of counsel, that said assessment *is* made or pretended to be made, as above set forth, is void and no assessment, and that said county commissioners had no power or jurisdiction to make the said levy, and that said taxes are null and of no effect.

Your orator further represents that there was no assessment of said lands of the railroad company for the year 1875.

That the persons who pretended to act as assessors in the various precincts of said county did not go upon the said real estate to assess the same or ascertain the value of any of the tracts thereof, but followed the instructions of the board of county commissioners of said county of Boone, made by said board on the first day of February, 1875, at a meeting then held, which said *instruments* were in substance as follows:

That no assessment of any property was made by any of said assessors for said year, but that the said assessors did attempt to follow the instructions of the said county commissioners; but your orator avers the truth to be said assessors never made any assessment at all for said year, nor did any of them attach to their assessment-rolls or assessment lists the oath and certificate required by section 12 of chapter 66 of the General Laws of Nebraska, nor did either of them ever take and subscribe an oath such as is
449 certified to by the officer administering it, as is required by said section of said chapter.

That in fact the said assessors never made any assessment whatever of the said lands of the said railroad company for the said year of 1875.

Yet the clerk of said county of Boone did pretend that an assessment had been made of said lands, and did make out a list, and did charge the taxes which the county commissioners of said

county pretended to levy against the lands of the said railroad company, the sum altogether of ten thousand, four hundred seventeen & $\frac{57}{100}$ ($10,417.57) dollars.

Your orator further avers that the county commissioners did pretend to make the following levy:

"The following levy was made for the year 1875:

State Tax.

State general fund,	4	mills	on	the	dollar		$1,433 74
" sinking "	1	"	"	"	"		358 43
" school "	1	"	"	"	"		358 43
" university fund,	$\frac{1}{4}$	"	"	"	"		89 61
" penitentiary "	1	"	"	"	"		358 43
" relief "	$\frac{1}{10}$	"	"	"	"		35 84

County Tax.

County general fund,	6	mills	on	the	dollar		$2,150 60
Special bridge "	10	"	"	"	"		3,584 34
Land road "	6	"	"	"	"		

School-District Tax.

School district No.	1, 12	mills	on	the	dollar		
" " "	6, 6	"	"	"	"		
" " "	8, 6½	"	"	"	"		
" " "	17, 35	"	"	"	"		
" " "	10, 45	"	"	"	"		
" " "	5, 10	"	"	"	"		

450 That of said levy there is charged against the property or lands of said railroad company by the clerk of said county of Boone taxes to the amount of ten thousand four hundred & seventeen & $\frac{57}{100}$ dollars.

Your orator submits, under the advice of counsel, that said assessment, as made or pretended to be made, as above set forth, is void and no assessment, and that said county commissioners had no power or jurisdiction to make the said levy, and that said taxes are null and of no effect.

Your orator further submits that the following levy of taxes is void and without any authority of law, to wit:

"Special bridge, 10 mills on the dollar."

That the said board of county commissioners had no authority to make said levy of taxes; that said taxes so levied are void; that against the property of said railroad company in said county there are of taxes so charged against the lands of said railroad company the sum of fourteen hundred fifty-one and $\frac{49}{100}$ ($1,451.49) dollars.

Your orator further avers that the following taxes, levied as above set forth, to wit, "land road tax, 6 mills on the dollar," are levied without any authority of law and *is* void and no tax at all.

That against the property of said railroad company there is

charged the sum of seventeen hundred forty and $\frac{51}{100}$ ($1,740 & $\frac{51}{100}$) dollars by virtue of said illegal levy.

Your orator further avers that the said pretented levy of said board of county commissioners for the county of Boone for the payment of interest and principal of school bonds as above set forth was made without authority of law whatever and is void as a levy of taxes; yet there is charged against the lands of said rail-
451 road company in said county, of said taxes so pretended to be levied by said board, the sum of nine hundred fifty-eight and $\frac{23}{100}$ (958.23); that said taxes so levied are void.

Your orator submits, under advice of counsel, that the taxes charged by virtue of said illegal levies against the property of said railroad company in said county are imposed without authority of law and are void and of no effect.

Your orator represents that there was no assessment of the said lands of the said railroad company for the year A. D. 1876.

That the persons who pretended to act as assessors in the various precincts of said county did not go upon the said real estate to assess the same or ascertain the value of any of the tracts thereof, but followed the instructions of the board of county commissioners of said county of Boone, made by said board on the 7th day of February, at a meeting of said board then held, which said instructions were in substance as follows:

Were instructed to use their own discretion as to valuation of property; that no assessment of any property was made by any of said assessors for said year, but that said assessors did attempt to follow the instructions of the said county commissioners; but your orator avers the truth to be said asssessors never made any assessment at all for said year, nor did any of them attach to their assessment-rolls or assessment lists the oath and certificate required by section 12, chapter 66, of the General Laws of Nebraska, nor did either of them ever take and subscribe an oath such as is certified to by the officer administering it, as is required by said section of said chapter.

That in fact said assessors never made any assessment whatever of the said lands of the said railroad company for the said year 1876.

452 Yet the clerk of said county of Boone did pretend that an assessment had been made of said lands and did make out a list and did charge the taxes which the county commissioners of said county did pretend to levy against the lands of said railroad company the sum altogether of fifteen thousand six hundred twenty-eight & $\frac{53}{100}$ ($15,628.53) dollars.

Your orator further avers that the county commissioners did pretend to make the following levy:

"The levy of State taxes was made to conform to the report of the State auditor.

Assessment valuation of the county							$370,955 37
State general	fund,	4	mills	on	the	dollar	1,485 82
" sinking	"	1	"	"	"		370 95
" school	"	1	"	"	"		370 95
" university	"	¼	"	"	"		92 74
" penitentiary	"	1	"	"	"		370 95
" bonds	"	1/10	"	"	"		37 09

County Tax.

General fund,	6	mills	on	the	dollar		$2,225 73
Special bridge,	4	"	"	"			1,483 82
Land road,	5	"	"	"			1,511 12
" sinking fund for Co. bonds,	16½	mills	on	the	dollar		6,120 75

School-District Bond Tax.

School district No.	1,	15	mills	on	the	dollar	$420 00
" " "	5,	7	"	"	"		68 14
" " "	6,	6	"	"	"		165 59
" " "	7,	12	"	"	"		167 32
" " "	8,	7	"	"	"		247 62
" " "	10,	25	"	"	"		355 42
" " "	12,	5	"	"	"		49 20
" " "	14,	3	"	"	"		45 47
" " "	17,	45	"	"	"		319 77
" " "	22,	7	"	"	"		79 00

453 *School Taxes as Returned by School Boards.*

Dist. No.	1, 10 mills.	District No.	2, 20 mills.
Dist. No.	3, 8 mills.	Dist. No.	4, 14 mills.
"	5, 14 "	Dist.	6, 13 "
"	7, 13 "	Dist.	8, 18 "
"	9, 20 "	Dist.	10, 5¼ mills.
"	11, 22½ "	"	12, 15 "
"	13, 14 "	"	14, 15 "
"	15, 23 "	"	16, 13 "
"	17, — "	"	18, 10 "
"	19, 4 "	"	20, 25 "
"	21, 25 "	"	22, 12 "

That of said levy there is charged against the property or lands of the said railroad company by the clerk of said county of Boone taxes to the amount of fifteen thousand six hundred and twenty-eight & 53/100 ($15,628.53) dollars.

Your orator submits, under the advice of counsel, that said assessment as made or pretended to be made, as above set forth, is void and no assessment, and that said county commissioners had no power or jurisdiction to make the said levy, and that said taxes are null and of no effect.

Your orator further avers that the following tax, levied as above set forth, to wit, " land road five mills on the dollar," was levied

without any authority of law and is void and no tax at all; that against the property of said railroad company there is charged the sum of fourteen hundred and fifty dollars by virtue of said illegal levy.

Your orator further avers that the said pretended levy of said board of county commissioners for the county of Boone for the payment of interest and principal of school bonds, as above set forth, was made without any authority of law whatever and is void
454 as a levy of taxes, yet there is charged against the land of the said railroad company of said taxes so pretended to be levied by said board the sum of eleven hundred twenty-nine & $\frac{25}{100}$ dollars.

Your orator submits, under advice of counsel, that the taxes charged by virtue of said illegal levies against the property of said railroad company in said county are imposed without authority of law and are void and of no effect.

Your orator further avers that the following taxes, levied as above set forth, to wit, "county sinking fund for Co. bonds, 16½ mills," are levied without any authority of law and *is* excessive and void and no tax at all; that against the property of said railroad company in said county there is charged the sum of four thousand four hundred forty-two & $\frac{27}{100}$ ($442.27) dollars by virtue of said illegal levy.

Your orator submits, under advice of counsel, that the taxes charged by virtue of said illegal levy against the property of said railroad company in said county is imposed without any authority of law, *is* excessive and void and of no effect.

Your orator further represents that there was no assessment of the said real estate of said railroad company for the year A. D. 1877; that the persons who pretended to act as assessors in the various precincts of said county did not go upon the said real estate to assess the same or ascertain the value of any of the tracts thereof, but your orator avers the truth to be said assessors never made any assessment at all for said year nor did any of them attach to their assessment-roll or assessment list the oath and certificate required by section 12 of chapter 66 of the General Laws of Nebraska, nor did either of the said assessors ever take and subscribe an oath
455 such as is certified to by the officer administering it, as is required by said section of said chapter.

That as a fact the said assessors never made any assessment whatever of the said lands of the said railroad company for the said year of 1877; yet the clerk of said county did pretend that an assessment had been made of said lands and did make a list, and did charge the taxes which the county commissioners of said county pretended to levy against said lands of said railroad company, the amount altogether in said county of the sum of — dollars.

Your orator further avers that the county commissioners did pretend to make the following levy, to wit:

County general, 10 mills on the dollar.
County sinking, 9 mills on the dollar.
" bridge, 5 mills on the dollar.

Ordered that all taxes levied by State officers and by the various

officers of school districts be, and the same are hereby, levied against the taxable property in said county; that of said levy there is charged against the property of said railroad company in said county taxes to the amount of over fifteen thousand dollars.

Your orator submits, under advice of counsel, that the taxes charged by virtue of said illegal levy are all imposed without authority of law and are all null and void. The said defendant, Treasurer of Boone County, has advertised said lands for sale for the taxes of said years, with costs, penalties, interest, &c. (except 1877), and threatens to proceed to sell the same in pursuance of the authority vested in him as such treasurer, and unless restrained by the order and injunction of this court will proceed to do so and will give the purchasers of said lands of said defendant company certificates
456 in the form in that behalf prescribed by law, whereby a cloud will be cast upon said company's title and it subjected to many suits in respect thereof, and to expenses exceeding the value of the said property.

Your orator is and has been for four years and more last past the owner and holder of twenty-three hundred and sixteen (2,316) shares of the stock of said company. On the 5th day of August he requested the board of directors of said company to take efficient measures to protect it from illegal exactions of the taxes claimed by said board of county commissioners and said treasurer, which request the said board refused, and the said company, by its proper officer, before the filing of the original bill herein, proposed and was about to pay the said illegal taxes. He and all the stockholders of said company, who number over one thousand persons, are citizens of the United States other than Nebraska and the defendants are citizens of the State of Nebraska.

Whereupon your orator prays that the said defendants may answer this bill, but not under oath, which is hereby waived, and that it be by the decree of your honors declared that all of the taxes levied by said board upon the lands of the said defendant company are illegal, null, and void; that the said treasurer be restrained by the order and injunction of your honors from in any manner enforcing taxes or any thereof and from selling the said lands or any thereof for said taxes, and that said company be in like manner restrained from paying the same, and that said treasurer and board be decreed to cancel said taxes and the record thereof upon the books and records of said county and to pay the costs of this suit, and that your orator and all other stockholders as aforesaid may have all such other and further relief as the circumstances of this case require and as is agreeable to equity and good conscience.

457 May it please your honors to grant unto your orator not only the writ of injunction, issuing out of and under the seal of this honorable court, directed to the said defendants, The Burlington and Missouri River Railroad Company in Nebraska, The Board of County Commissioners of Boone County, and S. P. Bollman, its treasurer, restraining them as hereinbefore prayed, but also the writ of subpœna, issuing in like manner and directed to the said defendants, commanding them and each of them that at a day therein to

be inserted they appear before your honors in this honorable court, then and there to answer this your orator's bill, and to stand to, abide, and perform such order and decree in the premises as to your honors may seem to be agreeable to equity and good conscience.

And your orator will ever pray.

T. M. MARQUETT,
Att'y for Plaintiff.

EXHIBIT "A."

Boone.

Part of sec.	Sec.	T'p.	R.	Acres.
All	5	18	5	
All	7	18	5	
All	1	19	5	
E. ½	3	19	5	
S. W. ¼	3	19	5	
E. ½ N. W. ¼	3	19	5	
E. ½	5	19	5	
W. ½ S. W. ¼	7	19	5	
W. ½	9	19	5	
All	11	19	5	
All	13	19	5	
All	15	19	5	
457½ All	19	19	5 W.	
S. W. ¼	21	19	5	
All	23	19	5	
All	25	19	5	
All	29	19	5	
All	31	19	5	
N. ½	33	19	5	
N. E. ¼	35	19	5	
E. ½ N. W. ¼	35	20	5	
All	1	20	5	
All	3	20	5	
All	5	20	5	
All	7	20	5	
All	9	20	5	
All	11	20	5	
All	13	20	5	
All	15	20	5	
All	17	20	5	
All	19	20	5	
All	21	20	6	
All	23	20	5	
All	25	20	5	
All	27	20	5	
All	1	22	5	
All	3	22	5	
All	5	22	5	
All	7	22	5 W.	
All	9	22	5 W.	
All	11	22	5	
All	13	22	5	
All	15	22	5	
All	17	22	5	
All	19	22	5	
All	21	22	5	
All	23	22	5	
All	25	22	5	
All	27	22	5	
All	29	22	5	
All	31	22	5	
All	33	22	5	
All	35	22	5	
All	1	18	6	
All	3	18	6	
All	5	18	6 W.	
All	7	18	6	
All	9	18	6	
All	11	18	6	
All	13	18	6	
All	15	18	6	
All	17	18	6	
All	19	18	6	
All	21	18	6	
All	23	18	6	
Lot No. 1	29	18	6	
N. ½	29	20	5 W.	
W. ½ S. E. ¼	29	20	5	
S. W. ¼	29	20	5	
N. ½	31	20	5	
N. ½ S. E. ¼	31	20	5	
N. ½ S. W. ¼	31	20	5	
E. ½	33	20	5	
S. W. ¼	33	20	5	
All	35	20	5	
All	1	21	5	
All	3	21	5	
All	5	21	5	
All	7	21	5	
All	9	21	5	
E. ½	11	21	5	
E. ½ S. W. ¼	11	21	5 W.	
E. ½ S. W. ¼	11	21	5	
N. W. ¼ S. W. ¼	11	21	5	
N. W. ¼	11	21	5	
S. ½ S. W. ¼	13	21	5	
N. ½ N. W. ¼	13	21	5	
N. ½ N. E. ¼	15	21	5	
S. W. ¼ N. E. ¼	15	21	5	
S. ½	15	21	5	
N. W. ¼	15	21	5	
All	17	21	5	
All	19	21	5	
All	21	21	5	
All	23	21	5	
All	25	21	5	
All	27	21	5	
All	29	21	5	
All	31	21	5	
All	31	21	5	
All	35	21	5	
All	3	19	6 W.	
All	5	19	6	
All	7	19	6	
All	9	19	6	
All	11	19	6	
All	13	19	6 W.	
All	15	19	6	
All	17	19	6	
All	19	19	6	
All	21	19	6	
All	23	19	6	
All	25	19	6	
All	27	19	6	
All	29	19	6	
All	31	19	6	
All	33	19	6	
All	35	19	6	
All	1	20	6	
All	3	20	6	
All	5	20	6	
All	9	20	6	
All	11	20	6	
All	13	20	6	
N. ½ N. E. ¼	15	20	6	
S. E. ¼ N. E. ¼	15	20	6	
N. E. ¼ S. E. ¼	15	20	6	
S. ½ S. E. ¼	19	20	6	
S. ½ S. W. ¼	19	20	6	
N. W. ¼ S. W. ¼	19	20	6	
W. ½ N. W. ¼	19	20	6	
N. W. ¼	21	20	6	

EXHIBIT "A"—Continued.

Part of sec.	Sec.	T'p.	R.	Acres.
Lot No. 2	29	18	6	
N. ½ N. E. ¼	1	19	6	
S. E. ¼ N. E. ¼	1	19	6	
E. ½ S. E. ¼	1	19	6	
S. W. ¼ S. E. ¼	1	19	6	
S. ½ S. W. ¼	1	19	6	
458 S. W. ¼	27	20	6 W.	
All	29	20	6 W.	
All	31	20	6 W.	
All	33	20	6	
S. W. ¼	35	20	6	
All	1	21	6	
All	3	21	6	
All	5	21	6	
All	7	21	6	
All	9	21	6	
All	11	21	6	
All	13	21	6	
All	15	21	6	
All	17	21	6	
All	19	21	6	
All	21	21	6	
All	23	21	6	
All	25	21	6	
All	27	21	6	
All	29	21	6	
All	31	21	6	
All	33	21	6	
All	35	21	6	
All	1	22	6	
All	3	22	6	
All	5	22	6	
All	7	22	6	
All	9	22	6	
All	11	22	6	
All	13	22	6	
All	15	22	6	
All	17	22	6	
All	19	22	6	
All	21	22	6	
All	23	22	6	
All				
All				
All				
All				
All	33	19	7 W.	
All	35	19	7	
E. ½ N. E. ¼	1	20	7	
All	3	20	7	
All	5	20	7	
All	7	20	7	
All	9	20	7	
All	11	20	7	
S. W. ¼	13	20	7	
All	15	20	7	
All	17	20	7	
All	19	20	7	
All	21	20	7	
All	23	20	7	
All	25	20	7	
All	27	20	7	
All	29	20	7	
All	31	20	7	
All	33	20	7	
459 All	35	20	7	
All	1	21	7	
All	3	21	7	
All	5	21	7	
All	7	21	7	
All	9	21	7	
N. ½	11	21	7	
E. ½ S. E. ¼	11	21	7	
E. ½ S. W. ¼	11	21	7	
All	13	21	7	
All	15	21	7	
All	17	21	7	
All	19	21	7	
All sec. tion. — Lot No. 1	7	17	8	23.23
Lot No. 2	7	17	8	23.93
Tot No. 3	7	17	8	24.57
Lot No. 4	7	17	8	25.27
W. ½ N. E. ¼	7	17	8	
W. ½ N. E. ¼	7	17	8	

Part of sec.	Sec.	T'p.	R.	Acres.
N. ½ N. E. ¼	23	20	6	
S. E. ¼ N. E. ¼	23	20	6	
N. E. ¼ S. E. ¼	23	20	6	
E. ½	25	20	6	
S. ½ S. W. ¼	25	20	6	
E. ½ N. W. ¼	25	20	6	
All	25	22	6	
All	27	22	6	
All	29	22	6	
All	31	22	6	
All	33	22	6 W.	
All	35	22	6 W.	
All	1	18	7	
All	3	18	7	
All	5	18	7	
All	7	18	7	
All	9	18	7	
All	11	18	7	
All	13	18	7	
All	15	18	7	
All	17	18	7	
All	19	18	7	
All	21	18	7	
All	23	18	7	
All	25	18	7	
All	27	18	7	
All	29	18	7	
All	31	18	7	
All	33	18	7	
All	1	19	7	
All	3	19	7	
All	5	19	7	
All	7	19	7	
All	9	19	7	
All	11	19	7	
All	13	19	7	
All	15	19	7	
All	17	19	7	
All	19	19	7	
All	21	19	7	
All	23	19	7	
All	25	19	7	
All	27	19	7	
All	29	19	7	
All	31	19	7	
All	29	21	7	
All	31	21	7	
All	33	21	7	
W. ½	35	21	7	
All	1	22	7	
All	3	22	7	
All	5	22	7	
All	7	22	7	
All	9	22	7	
All	11	22	7	
All	13	22	7	
All	15	22	7	
All	17	22	7	
All	19	22	7	
All	21	22	7	
All	23	22	7	
All				
All	25	22	7	
All	27	22	7	
All	29	22	7	
All	31	22	7	
All	33	22	7	
All	35	22	7	
All sec. — Lot No. 1	7	16	8	
Lot No. 2	7	16	8	
W. ½	7	16	8	
All sec. — Lot No. 1	19	16	8	
Lot No. 2	19	16	8	
W. ½	19	16	8	
All sec. — Lot No. 1	31	16	8	
Lot No. 2	31	16	8	
W. ½	31	16	8	
All	1	19	8	
All	3	19	8	
All	5	19	8	
All	7	19	8	
All	9	19	8	
All	11	19	8	

EXHIBIT "A"—Continued.

Part of section.	Sec.	Tp.	R.	Acres.	Part of section.	Sec.	Tp.	R.	Acres.
W. ½	7	19	8		All	13	19	8	
All sec. Lot No. 1	19	7	8	29.11	All	15	19	8	
Lot No. 2	19	17	8	29.31	All	17	19	8	
Lot No. 3	19	17	8	29.49	All	19	19	8	
Lot No. 4	19	17	8	29.69	All	21	19	8	
W. ½ N. E. ¼	19	17	8		All	23	19	8	
W. ½ S. E. ¼	19	17	8		All	25	19	8	
W. ½	19	17	8		All	27	19	8	
All sec. Lot No. 1	31	17	8	31.60	All	29	19	8	
Lot No. 2	31	17	8	31.37	All	31	19	8	
Lot No. 3	31	17	8	31.13	All	33	19	8	
Lot No. 4	31	17	8	30.90	All	35	19	8	
W. ½ E. ½	31	17	8		All	1	20	8	
W. ½	31	17	8		All	3	20	8	
All	1	18	8		All	5	20	8	
All	3	18	8		All	7	20	8	
All	5	18	8		All	9	20	8	
All	7	18	8		All	11	20	8	
All	9	18	8		All	13	20	8	
All	11	18	8		All	15	20	8	
All	13	18	8		All	17	20	8	
All	15	18	8		All	19	20	8	
All	17	18	8		All	21	20	8	
All	19	18	8		All	23	20	8	
All	21	18	8		All	25	20	8	
All	23	18	8		All	27	20	8	
All	25	18	8		All	29	20	8	
All	27	18	8		All	31	20	8	
All	29	18	8		All	33	20	8	
All	31	18	8		All	35	20	8	
All	33	18	8						
All	35	18	8						

460 DISTRICT OF NEBRASKA:

On this 4th day of March, A. D. 1878, before me personally appeared A. E. Touzalin, to me known to be the identical person who subscribed the foregoing bill, and, being by me duly sworn, said that the plaintiff therein is a non-resident of the said district and was absent therefrom; that the said deponent was his agent and by him duly authorized to bring this bill; that he has read the same and knew the contents thereof, and the same was true of his own knowledge except as to the matters stated on information and belief of said deponent, and as to them he believes it to be true.

A. E. TOUZALIN,
Agent for H. H. Hunnewell.

Subscribed in my presence and sworn to before me this 4th day of March, A. D. 1878.

GEO. B. HARRIS,
Notary Public.

Thereupon, afterwards, to wit, on the 5th day of February, 1879, a subpœna in chancery was duly issued in said case and returned and filed on the 13th day of Feb'y, 1879; which said subpœna in chancery is in words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

The President of the United States of America to the Burlington and Missouri River Railroad Co. in Nebraska, Horatio H. Hunnewell, the Board of County Commissioners of Boone County, Neb., and S. P. Bollman, treasurer of said county, Greeting:

We command you and each of you that you appear before the judges of the circuit court of the United States for the district of Nebraska, at Omaha, on the first Monday in March next, it being the 3rd day of March, A. D. 1879, to answer to the bill of
461 complaint of Loran Clark, on behalf of himself and all others similarly situated, this day filed in the office of the clerk of said court, and then and there to receive and abide by such order and decree as shall then or thereafter be made upon pain of the said bill being taken as confessed against you and decree pronounced accordingly.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 5th day of February, A. D. 1879, and of the Independence the 103d year.

[SEAL.] WATSON B. SMITH, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Omaha aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed and a decree entered thereon accordingly.

WATSON B. SMITH, *Clerk.*

Attached to said subpœna in chancery are the returns of the marshal in words and figures, to wit:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 5th day of February, 1879, I received this sub. in chancery and on the 8th day of February, 1879, I served the same upon the within-named The Burlington and Missouri River Railroad Company in Neb., by William Irving, its superintendent, in Douglas county, State and district of Nebraska, by delivering to and leaving with him a certified copy thereof, after diligent search and being unable to find any other of the chief officers of said company in my district on whom to make said service.

WILLIAM DAILY,
United States Marshal for the District of Nebraska,
By ASBURY TOWNSEND,
Deputy United States Marshal.

Marshal's costs, $34.70.

462 DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 5th day of February, 1879,

I received this sub. in chancery and on the 11th day of February, 1879, I served the same upon the within-named The Board of County Commissioners of Boone County, Neb., by Edwin Broadbent, its chairman, and S. P. Bollman, treasurer of said county, in Boone county, State and district of Nebraska, by delivering to and leaving with each a certified copy thereof.

WILLIAM DAILY,
United States Marshal for the District of Nebraska,
By ASBURY TOWNSEND,
Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 5th day of February, 1879, I received the within sub. in chancery, and that after diligent search I am unable to find the within-named defendant, Horatio H. Hunnewell, within my district.

WILLIAM DAILY,
United States Marshal for the District of Nebraska,
By ASBURY TOWNSEND,
Deputy United States Marshal.

Upon the back of said subpœna in chancery appear endorsements in words and figures following, to wit: No. 84. Doc. E. Circuit court of the United States for the district of Nebraska, in chancery. Loran Clark, on behalf of himself and all others similarly situated, *vs.* The B. & M. R. R. Co. in Neb. *et al.* Subpœna in chancery. Returnable to rule day, first Monday in March, 1879. Watson B. Smith, clerk. Returned and filed Feb'y 13, 1879. Watson B. Smith, clerk, by E. D. Frank, deputy. John M. Thurston, comp't's sol.

Thereupon, afterwards, to wit, on the 22nd day of March, 1879, an appearance was filed in said case; which said appearance is in words and figures following, to wit:

In the United States Circuit Court, District of Nebraska.

463 LORAN CLARK, Suing for Himself and Others,
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD CO., HORATIO H. HUNNEWELL, The Board of County Commissioners of Boone County, Nebraska, and S. P. Bollman, Treasurer of said County.

To the clerk:

Enter our appearance for the defendants in the above-entitled cause and oblige yours, &c.,

T. M. MARQUETT, *Solicitor.*
J. M. WOOLWORTH,
Of Counsel for Def't.

Dated Omaha, March 22, 1879.

Upon the back of said appearance appear endorsements in words and figures following, to wit: No. 84, E. Loran Clark *vs.* Burling-

ton and Missouri River R. R. Co. *et al.* Appearance of defendants. Filed March 22, 1879. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 7th day of April, 1879, a demurrer was filed in said case; which said demurrer is in words and figures following, to wit:

In the United States Circuit Court, District of Nebraska.

The demurrer of The Burlington and Missouri River Railroad Company in Nebraska, Horatio H. Hunnewell, The Board of County Commissioners of Boone County, in Nebraska, and S. P. Bollman, treasurer of said county, defendants, to the bill of complaint of Loran Clark, plaintiff.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set
464 forth or alleged, do demur thereto, and for cause of demurrer show that the said plaintiff has not in and by his said bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought or prayed for from or against these defendants. Wherefore these defendants demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained and pray to be hence dismissed with their reasonable costs in this behalf sustained.

T. M. MARQUETT,
Solicitor for Def't.

J. M. WOOLWORTH, *Of Counsel.*

DISTRICT OF NEBRASKA, *ss:*

A. E. TOUZALIN, being duly sworn, says that the above demurrer is not interposed for delay; that this deponent is the demurrant in the said demurrer; and he further says that he is the general manager of the defendant Co. & its chief executive officer in the said district.

A. E. TOUZALIN.

Subscribed and sworn to before me this 22nd day of March, A. D. 1879.

[SEAL.] M. D. HYDE,
Notary Public.

I, James M. Woolworth, a counsellor of said court, do hereby certify that, in my opinion, the above demurrer is well founded in point of law.

JAMES M. WOOLWORTH.

Upon the back of said demurrer appear endorsements in words and figures following, to wit: No. 84, E. U. S. circuit court, district of Nebraska. Loran Clark *vs.* The Burlington and Missouri River

Railroad Co. Demurrer. Filed April 7, 1879. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 7th day of May, 1880, a stipulation was filed in said cause; which said stipulation is in words and figures following, to wit:

465 In the United States Circuit Court, District of Nebraska.

LORAN CLARK
vs.
THE B. & M. R. R. Co. IN NEB. *et al.* } In Equity. No. 84, E.

It is hereby stipulated between the parties to the above case that the demurrer to the bill of complaint herein be submitted to the Hon. G. W. McCrary, circuit judge, upon printed briefs, to be filed as follows:

Defendants' brief by July rules.
Complainant's " " August "
Defendants to reply by September rules.

J. M. THURSTON,
Sol. for Complainant.
J. M. WOOLWORTH,
Of Counsel for Def't-.

Upon the back of said stipulation appear endorsements in words and figures following, to wit: No. 84, doc. E. Clark *vs.* B. & M. R. R. in Neb. Stipulation to submit demurrer on briefs. Filed May 7, 1880. Watson B. Smith, clerk. J. M. Thurston, sol. for complainant.

Thereupon, afterwards, at the May term of said court, on the 8th day of May, 1880, the following proceedings were had, as appears of record on folio 326, Journal "F," of said court, to wit:

LORAN CLARK
vs.
THE BURLINGTON & MISSOURI RIVER R. R. Co. IN NEB. *et al.* } No. 84, E.

The parties herein, by their solicitors, stipulating and agreeing thereto, it is ordered that the demurrer to the bill herein stand submitted to the circuit judge upon printed briefs, to be filed — defendants' solicitor by July rules, by plaintiff's solicitor by August rules, and by defendants' solicitor in reply by September rules.

466 Thereupon, afterwards, at the November term of said court, on the 10th day of November, 1880, the following proceedings were had, as appears of record on folio 491, Journal "F," of said court, to wit:

LORAN CLARK, Suing for Himself and Others,
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD Company in Nebraska, Horatio H. Hunnewell, The Board of County Commissioners of Boone County, and S. P. Bollman, Treasurer of said County. } No. 84, E.

The demurrer of the said defendants to the bill of complaint filed in this cause came on to be heard and was argued by counsel. It is thereupon ordered that the said demurrer be, and the same is hereby, sustained for want of equity in the said bill; and it is ordered, adjudged, and decreed that the said bill be, and it is hereby, dismissed at costs of said plaintiff.

UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court of the United States for the eighth circuit and district of Nebraska, certify that the foregoing folios, from one to 64, contain true and faithful transcripts of the pleadings, process, and proceedings of record and on file in my office as said clerk in the case of Loran Clark, on behalf of himself and others, &c., *vs.* The B. & M. R. R. Co. in Nebr. *et al.*

Witness my hand and the seal of said circuit court, at Omaha, Nebraska, this 25th day of September, A. D. 1884.

[SEAL.] ELMER D. FRANK, *Clerk.*

467 In the Circuit Court of the United States, District of Nebraska.

COUNTY OF BOONE, Complainant,
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD CO. IN NEBR., Respondents. } In Equity. No. 30. Docket H.

J. C. Cowin, solicitor for complainant:

You will please take notice that the above-named respondent desires the evidence to be adduced in said case to be taken orally under the sixty-seventh rule in equity of the Supreme Court as amended.

You will further take notice that by an order made in said cause by C. P. Drennen, examiner in chancery of said court, the examination of witnesses on the part of said respondent will take place before said C. P. Drennen, at office of T. M. Marquett, Lincoln, Neb., on the 13th day of September, 1884, and proceed as the said examiner may direct, adjourning from day to day if necessary.

T. M. MARQUETT,
Solicitor for Respondent.

To J. C. Cowin, solicitor for complainant:

Ordered that the testimony of witnesses for respondent in foregoing cause mentioned may be taken before me, at the place therein stated on the 13 day of Sept., 1884, at 9 o'clock a. m., such examination to proceed until completed, unless adjourned for cause.

It is further ordered that solicitors for complainant have 3 days' notice of said examination.

C. P. DRENNEN,
Special Examiner in Chancery.

I hereby accept service of the within and waive the five days' notice required under stipulation order, &c.
Sept. 11, '84.

J. C. COWIN,
Of Counsel for Pl'ff.

468 In the Circuit Court of the United States for the District of Nebraska.

THE COUNTY OF BOONE, Complainant,
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA and H. H. HUNNEWELL, Respondents. } 30. H.

In accordance with the order of the court and the stipulation and agreements made and entered into by the above-named parties, by their attorneys, said stipulation and agreements and a certified copy of said order having been filed, with complainant's evidence heretofore filed in this cause, I, C. P. Drennen, special examiner in chancery of the above-named court, commencing on the 13th day of September, 1884, at the hour of nine o'clock in the forenoon, at the office of T. M. Marquett, at Lincoln, Nebraska, pursuant to the notice hereto attached, took the testimony on the part and behalf of the respondents in said cause, which testimony I have reduced to writing as in the depositions following, each of the several witnesses, to wit, M. H. Sessions, John Peters, H. W. Lapping, Pearson D. Smith, Thomas Thompson Wilkinson, William Weitzel, Manly B. Boardman, J. D. McFarland, and T. M. Marquett, before testifying, being by me duly sworn to testify the truth, the whole truth, and nothing but the truth touching such matters in the cause as were of them inquired, the counsel for the parties, to wit, T. M. Marquett, Esq., for the respondent, and J. Cowin, Esq., and J. S. Miller, Esq., for the complainant, appearing and examining the witnesses, and said counsel agree and consent that the signatures to the said testimony shall be waived.

469 And the said M. H. SESSIONS, being about the age of 60 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said M. H. Sessions, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MARQUETT:

Int. 1. What is your name?
Ans. 1. M. H. Sessions.
Int. 2. What is your occupation?

Ans. 2. Attorney-at-law.

Int. 3. How long have you been practicing law?

Ans. 3. About thirty-five years.

Int. 4. Were you ever employed in a suit wherein H. H. Hunnewell was plaintiff and The Board of County Commissioners of Boone County and The Burlington and Missouri River Railroad Company in Nebraska and others were defendants?

Ans. 4. I was.

Int. 5. Now you may state all about your employment in that suit, the time when, and what you did in the suit, and how you came to be employed.

Ans. 5. I think it was in January or February, 1878—the exact date is not in my mind—the board of county commissioners of Boone county, with the clerk, came to my office here in this city and said that they wanted to consult with me with reference to the matter of their taxes upon the B. & M. Railroad Company's lands. They said that they had entered into a contract with one Adam Smith, and that Adam Smith was making a contract for purchasing a certain amount of lands of the railroad company, and that they had entered into a contract by which certain taxes upon the lands which the company claimed were illegal and refused to pay
470 for various reasons, they giving the reasons themselves—to wipe out those taxes in some way that could be done legally. They said that Mr. Smith was here and they desired me for them, for the county of Boone, to go with them to the office of the B. & M. Land Company, Mr. Touzalin's, and there meet the parties and enter into an arrangement by which the contract that they had made and entered into with Smith could be fully carried out and the taxes that were assessed, apparently a lien, be wiped out, so that they could carry out the contract that they had made and entered into with Mr. Smith. There the matter was fully talked up and papers executed for the purpose of carrying out the intent and object of that contract as made.

Int. 6. What contract?

Ans. 6. Between the commissioners and Adam Smith. The papers were made and executed according to the terms and conditions of the contract. The contract between the county and Mr. Smith was a written contract, and the agreements and arrangements for the purpose of carrying out the spirit and letter of that contract were made and the bonds executed as provided for in the contract.

Int. 7. Now, Mr. Sessions, you might go on and state, if you recollect, what passed between you and the commissioners.

Ans. 7. At the time they first came to my office to employ me they came in and said that they wanted to employ me for the county of Boone for the purpose above named.

Int. 8. What conversation, if any, took place at Mr. Touzalin's office?

Ans. 8. About that matter, after we got there?

Int. 9. Yes.

Ans. 9. In reference to what?

Int. 10. In reference to anything about it.

Ans. 10. I was going to speak about the manner of employment, what they said, who would pay me, or how I was to be paid, and while I was with them at Mr. Touzalin's office there wasn't
471 a word said about it.

Int. 11. Well, what I want you to state is just what happened here—just the words and what you did. Now, then, let me ask you to look at these papers and see if this is a correct copy of the papers made?

(A paper was here shown witness, which is hereto attached, marked "Exhibit A," and made a part of this testimony.)

Ans. 11. I have no doubt that is a copy—that is, it is in substance. I have no doubt but that is a copy of the paper that I signed and the agreement that was made and entered into at that time.

Int. 12. There is some three lines here that it is claimed by some of the commissioners that it was never read to them, or they never understood that it was here, and that is this: "All of said taxes having been examined and agreed upon as being illegal and void." Do you recollect who read that portion to them?

Ans. 12. I read it and they read it, and before that was signed that paper was taken into another room by us and read, and that paper was read and fully understood by every person present just as it was, fully and completely.

Int. 13. Mr. Sessions, what next happened?

Ans. 13. After that, in pursuance of that a suit was instituted in the United States court for the purpose of wiping out the taxes as agreed upon in the papers referred to, being the suit which I have already answered that I was employed and appeared in.

Int. 14. Mr. Sessions, I will ask you if you know whether there was any other stipulation as to what the decree should be other than what is in this paper marked "Exhibit A," which I have shown you? If so, you may state what you recollect about it.

Ans. 14. My recollection is that there was—made in the
472 case and presented to me by Mr. Marquett, the attorney of the plaintiff, in the suit, and signed by him and me, to be filed in the case, which I suppose was filed.

Int. 15. You may state, as near as you can, the contents of that paper—what the consideration was for the cancelling of the taxes.

Mr. COWIN: I take exception to the testimony, subject to the proof that the stipulation cannot be found.

Ans. 15. Well, now, Mr. Marquett, that is a thing that I haven't thought of from that time to this, and to give the exact wording of the stipulation would be a matter of impossibility.

Int. 16. Well, you can give the substance.

Ans. 16. Well, whether it was recited in the stipulation or in the talk that we had outside I could not state, but we agreed in the stipulation what taxes were to be wiped out and disposed of in the

decree in this case. I objected to it at that time for certain reasons, and then you produced to me a certificate from the clerk certifying as to the conditions of the taxes in certain years. That being had, I was satisfied under a decision of our supreme court that the taxes for those years, 1873, 1874, 1875, and 1876, I think, embraced in it—I don't recollect exactly what—were absolutely void and illegal.

Int. 17. Wasn't there anything said in that stipulation about the consideration—why this should be?

Ans. 17. I think that expressed it.

Int. 18. Well, what was it?

Ans. 18. In consideration of carrying out the terms of the agreement as made.

Int. 19. Made with whom?

Ans. 19. With the county commissioners and Adam Smith with reference to the wiping out of the taxes and of Adam Smith's performing the labor that he would perform in the building of the road.

473 Int. 20. Was Adam Smith to work out any taxes?

Ans. 20. Yes, sir.

Int. 21. Do you recollect the amount that would be worked out?

Objected to as being incompetent and irrelevant.

Ans. 21. I do not, but it was a large amount.

Int. 22. These certificates of the clerk that you refer to is where it showed that there had been no oaths attached to the assessment-rolls?

Ans. 22. Yes, sir. I should have stated that, that when you showed me the certificates these certificates showed that there was no oath attached to the assessment-rolls for all these years. I consented that the taxes should be wiped out.

The complainant objects to the testimony giving the contents of certificates in the absence of any proof that the certificates cannot be produced.

Int. 23. Do you recollect how many years—whether it was two or more?

Ans. 23. I think it was. My recollection is that it was more than two years. It may not be but two years.

Int. 24. Did you have any talk about your employment with Adam Smith, as attorney in the case in which Hunnewell was plaintiff and The County Commissioners and B. & M. Railroad Company in Nebraska and others were defendants?

Ans. 24. No, sir; none at all.

Int. 25. What, if any, talk—did you have any talk with Mr. Touzalin in reference to your employment by the county commissioners?

Ans. 25. No, sir; never spoke to Mr. Touzalin upon the matter in any shape whatever until I was taken to his office by the commissioners and clerk for that purpose.

Int. 26. Mr. Sessions, this question was asked to Commissioner

Broadbent, to wit: This is what Broadbent says: "I asked
474 Mr. Sessions what we could do in regard to the collection of the B. & M. Railroad Company's lands—taxes on lands in Boone county, I suppose he means—and the question was then asked, What was his answer? His answer was that they were not worth that. (The witness here snapped his finger.)" What, if anything, do you recollect about that?

Ans. 26. Nothing of the kind ever took place, to my recollection. When does he represent that conversation as taking place?

Int. 27. I suppose at the time the commissioners employed you.

Ans. 27. There was no such conversation as that. I can tell what was said if you want to know about it.

Cross-examination by Mr. COWIN:

Int. 1. When did you leave Lincoln?

Ans. 1. On the 26th day of March, 1884.

Int. 2. How long have you resided in Lincoln prior to that date?

Ans. 2. Since April 20, 1871.

Int. 3. During all that time you have pursued the profession of the law?

Ans. 3. I had.

Int. 4. When did you first become acquainted with Adam Smith?

Ans. 4. The only time that I ever saw Adam Smith, to my recollection, was at the time that I met him at the office of Mr. Touzalin, when I went there with the commissioners. Mr. Smith was there at that time, and I have no recollection of ever seeing him at any other time.

Int. 5. Had you ever heard of him before and knew who he was by reputation?

Ans. 5. Well, I don't know whether I had or not. I can't tell whether I ever heard of — before or not.

475 Int. 6. Did you not know that he was connected with the Burlington and Missouri River Railroad Company in Nebraska, in connection with its lands and town sites?

Ans. 6. No, sir; I had no knowledge of that kind.

Int. 7. Did you not know it in connection with the town site of Kearney?

Ans. 7. No, sir; never knew anything about it.

Int. 8. In January or February, 1878, you say, the board and clerk came to your office?

Ans. 8. Yes, sir.

Int. 9. State now who the individuals were—their names.

Ans. 9. Well, I cannot. They were persons I had never seen before, and I paid no attention to their names, but they represented themselves and gave their names as the board and the clerk of that county.

Int. 10. How many of them were there?

Ans. 10. I think there were two of the commissioners and the clerk.

Int. 11. Three in all?

Ans. 11. Three in all. That is my present recollection.

Int. 12. You had never seen or heard of either one of the individuals before, had you?

Ans. 12. No, sir; not to my recollection.

Int. 13. To be a little particular at this point, can you state who first addressed you?

Ans. 13. My impression is it was the clerk.

Int. 14. As near as you can, state what he said.

Ans. 14. He came in and introduced himself, and who he was, and the other men, and who they were, and then commenced to state the object of their visit.

Int. 15. Now, then, state what he said in stating the object of his visit.

476 Ans. 15. He said that they had heretofore entered into a contract with Adam Smith with reference to the wiping out of the taxes upon their lands, and that they were down here for the purpose of making these arrangements, and gave the reasons why they went into it. He said that, as the matter was situated before they made that contract, that the lands were taxed, and that the B. & M. Railroad Company claimed that they were illegal and would not pay them; that they could not make any sales of the lands; it prevented immigration into the county and the sale of the lands, and that in the condition that they were that they could not do anything at all. They didn't give the details of the contract, but just said that they had made the contract with Mr. Smith, by which he was to do certain things, and these illegal taxes to be wiped out by some process, so that the contract could be carried out, and that they wanted to employ me to look after their interests in the matter, so that the contract between them and Adam Smith could be carried out.

Int. 16. Then, Mr. Sessions, to put it briefly and to comprehend the whole object of your employment to its full extent, it was to execute the contract made by the county with Adam Smith?

Ans. 16. They employed me for that purpose—to see that it was properly carried out.

Int. 17. To see that the county had their rights under that contract, and employed you in nothing else?

Ans. 17. Yes.

Int. 18. Then, did they state to you, without giving the contents now, what that contract with Adam Smith was?

Ans. 18. They just stated, in a general way, what it was. The contract wasn't with them, and I didn't see it until I got to the office.

477 Int. 19. What office?

Ans. 19. Mr. Touzalin's, where we went to do the business.

Int. 20. Who was Mr. Touzalin?

Ans. 20. He was the land commissioner of the B. & M. Railroad Company at that time.

Int. 21. They stated in substance what that contract was; among other things, they stated that the Burlington road wouldn't pay any

of the taxes, claiming that they were illegal for those years mentioned?

Ans. 21. Yes.

Int. 22. And they wanted those taxes all wiped out?

Ans. 22. They said that the lands could not be sold; nobody would buy them, and that it was an embargo upon the county, and wanted the illegal taxes wiped out.

Int. 23. Did that constitute all the taxes on their lands for those years?

Ans. 23. I think the defects were absolute for all those years—for all or a portion of them. I can't tell now the number of years.

Int. 24. Did they say to you anything about as to what were legal and what were illegal?

Ans. 24. They stated to me in a general way that their assessments were in a very bad shape, and there it was I asked them what defects there were about their assessments, and I asked them, too, particularly about there being any oath of the assessors in the office with reference to the assessments; and I know I told them this then, that if that was true that there was no oath to the assessments in the office; that the taxes would be void, and that they would not be even a lien upon the land.

Int. 25. Did they then say that there were no oaths to the assessment-rolls?

Ans. 25. They said they thought there wasn't to some of
478 them, but they could not tell; they were not certain as to the extent, but there were not to some of them.

Int. 26. Was the clerk present at this conversation?

Ans. 26. Yes, sir.

Int. 27. And did he at that time make a statement to you of the number of years that there were no oaths attached to the assessment-rolls?

Ans. 27. No, sir.

Int. 28. Did he at that time present to you certificates that there were no oaths attached to the assessment-rolls?

Ans. 28. No, sir.

Int. 29. Did he at that time state to you that he had sent certificates to Mr. Marquett, the general attorney of the Burlington and Missouri River Railroad Company in Nebraska, that there were no oaths to the assessment-rolls?

Ans. 29. No, sir.

Int. 30. And he was unable to inform you, the counsel for the county, as to the number of years there were no assessment rolls; that is the fact, is it?

Ans. 30. He did not give me the number of years that he found.

Int. 31. Now, then, they were making these statements to you, showing that the taxes were illegal, as a reason for having entered into the contract with Adam Smith; is that the fact?

Ans. 31. No, sir; that came up in this way: I asked them the question why the company refused to pay the taxes, and their answer was, because the company claimed that they were illegal.

Int. 32. For what year was that right in there?

Ans. 32. I don't recollect any particular year, but this conversation that I have in my mind was the general run of the taxes, and the company claimed that they were illegal. Then I asked them the questions for the purpose of finding out their condition.
479 I asked them if they had examined carefully the matter and if the assessor had properly done his duty and made his oath in his returns to the assessment-rolls, and they answered that they could not tell as to all, but felt sure that he hadn't done it to all of them, but to what extent they could not then tell. I told them then that to all assessments in which there was that defect that the assessments would be void.

Int. 33. What defect?

Ans. 33. Where there was no oath in the office of the assessor to the assessment-rolls that those assessments would be void.

Int. 34. Then this conversation with respect to the illegality of the tax arising from defects in the proceedings to impose it had no bearing whatever, as I understand you now, upon the question that they sought to advise with you concerning?

Ans. 34. Their illegality in the end; but they was to carry out that contract there and determine afterwards the amount of the taxes to be wiped out.

Int. 35. When were they to determine the amount of taxes to be wiped out?

Ans. 35. That wasn't fixed, I don't think—the time. There wasn't anything said about it as I know of now. The suit was to be brought and then I was to appear in it and that was to be arranged by stipulation, as it was.

Int. 36. Now, then, as I understand you, they were to determine afterwards as to what taxes were illegal—a suit was to be brought and the question of the legality of the taxes tested in this suit. Is that right?

Ans. 36. They was to be wiped out. There was an action to be brought and I was to go into court and enter an appearance for them, and then the taxes as agreed upon that they were subject to as illegal were to be wiped out. The taxes that there was no
480 question about the illegality of were to be wiped out.

Int. 37. Who was to determine the question of the legality or illegality of the taxes?

Ans. 37. That was to be agreed upon by stipulation afterwards and was by Mr. Marquett and myself, and the amount—the taxes that was to be wiped out—was to be fixed by stipulation afterwards.

Int. 38. Who were to determine the legality or illegality of the taxes?

Ans. 38. I don't know that the matter was particularly spoken of, who was to determine, more than this, that I was to look at it and look it over when the certificates were presented to me, and the stipulation was made by me and Mr. Marquett and I consented to the stipulation.

Int. 39. What I want to know here, Mr. Sessions, and what I consider of importance in this inquiry is this: At the time that you talked with the commissioners in your office upon the question of

carrying out the agreement made by the county with Adam Smith, in which you understood it was stipulated that all illegal taxes were to be wiped out and the question was submitted to you, I want to know who it was that was to determine the legality or illegality of the taxes in controversy and who it was that was to decide what taxes were to be wiped out under that stipulation?

Ans. 39. I was.

Int. 40. Then, as a matter of fact, the county commissioners and the clerk of Boone county submitted the question to you to determine upon the legality and illegality of the taxes for the years afterwards mentioned in the decree?

Ans. 40. Well, now, I can't say that they did. The matter determining the legality and illegality and who should decide it
481 wasn't talked of at that time particularly, as I recall, and it is hard for me to answer that question yes or no.

Int. 41. You concede, Mr. Sessions, that the inquiries of your client, Boone County, involved the question of the legality or illegality of the tax, do you not?

Ans. 41. Yes, sir.

Int. 42. You pretend to say that while that was an open question under the contract they wanted executed that you were not consulted as to the legality or illegality of that tax?

Mr. MARQUETT: We object to that because is assumes that the contract left it an open question—the question assumed.

Ans. 42. The question of the taxes was settled in the contract.

Int. 43. Now, then, I understand you to say that the legality or illegality of the taxes was already determined in the contract that the county had entered into with Adam Smith before consulting you. Is that so?

Ans. 43. No; I don't say that.

Int. 44. Then what does your last answer mean, when you say that was determined in the contract?

Ans. 44. Well, that matter at that time was not talked definitely about and it was left simply to go up there to carry out the contract, was what I had in my mind at that time.

Int. 45. Very well; but you evade my question. Was there any question submitted to you, directly or indirectly, by the county commissioners or clerk of Boone county with respect to the legality or illegality of any of the taxes for the years mentioned in the decree?

Ans. 45. At that time there was not.

Int. 46. What do you mean by that time?

Ans. 46. I mean when they were here and had the talk with me and employed me to go to the office of Mr. Touzalin, and at the office of Mr. Touzalin during the whole of that time. I
482 mean at that time.

Int. 47. Then there never was any question submitted to you by the commissioners as to the legality or illegality of the taxes involved in the decree?

Ans. 47. No, sir; not at that time.

Int. 48. Was there ever at any time?

Ans. 48. Only as I have stated.

Int. 49. Well, when, if at any time, was there any question submitted to you with respect to the legality or illegality of the taxes involved in the decree?

Ans. 49. The only time that I now recollect of having any conversation with regard to the legality or illegality of the taxes was the conversation between Mr. Marquett and myself, at the time that the stipulation was signed.

Int. 50. Now, then, to be specific, you were not called upon at all, directly or indirectly, to give an opinion or question the matter of the legality of that tax until Mr. Marquett presented you, to be signed by you as attorney for Boone county, the stipulation with respect to the decree to be entered in a case thereafter to be brought by the company? That is the fact, is it?

Ans. 50. There was no suit brought by the company to my knowledge.

Int. 51. Then, you were not called upon by the county to pass, directly or indirectly, upon the question of the legality of any of the taxes involved in this decree until the stipulation referred to in your testimony-in-chief was presented to you by Mr. Marquett to be signed? Is that the fact?

Ans. 51. To my present recollection, that is the fact.

Int. 52. Did you consider in your employment by Boone county at any time during any of that employment with respect to
483 the case in controversy that you were called upon to pass upon the legality or illegality of those taxes?

Ans. 52. I considered by the terms of the employment that I was to pass upon it or consent to a decree in the case to carry out the terms and conditions of that contract and upon the evidence furnished me by themselves of the condition of their own taxes, which I did.

Int. 53. Did you read the contract between Boone county and Adam Smith, upon which you were to act?

Ans. 53. I did. I read it at the time that we were here at Mr. Touzalin's office. I don't recollect that I read it afterwards.

Int. 54. Did that contract leave it an open question with respect to any of the Boone county taxes on the railroad company's lands for the years mentioned in the decree?

Ans. 54. Well, Mr. Cowin, I won't attempt to state now about the terms of that contract; the contract will speak for itself.

Question objected to as being incompetent and calling for hearsay. The contract itself will be the best evidence.

Int. 55. If, upon examining that contract, you found that it did not leave the matter of the legality of the taxes an open question or one to be decided, then you were not called upon at all to pass upon the legality or illegality of the taxes, were you?

Ans. 55. Of course not.

Int. 56. Then you do not now know whether you were called upon to pass upon the legality of the taxes or not, do you?

Ans. 56. I can't state.

Int. 57. If the contract with Adam Smith provided for the wiping out of the taxes for the years referred to in the decree, then
484 your whole duty was to assist the other side in making a decree that would legally wipe out the taxes in conformity with that contract; that is the fact, is it not?

Ans. 57. I was to carry out the contract that Adam Smith had made with the county.

Int. 58. I must then ask you further, after examining that contract: to execute the same and carry out the object of your employment by the county, what were you to do?

Ans. 58. I was to appear in a suit, if one was brought for that purpose, for the county and to see that the terms and conditions of that contract were carried out as therein made.

Int. 59. Mr. Sessions, you are a lawyer, and I ask you to state now what you were to do, not by answering that you were to carry out the terms of the contract, but state what you were to do in carrying out the terms of the contract.

Ans. 59. I was to enter an appearance in a suit that was to be brought, or had been brought, against the county for the purpose, and I was to enter the appearance for the county and see that such steps and proceedings were had in that suit that in the end a decree was entered therein in the court, by the terms and conditions of which decree the contract that the county had made with Mr. Smith was fully and completely carried out according to the terms and conditions of the same.

Int. 60. Now, Mr. Sessions, will you answer that question without stating to carry out the terms and conditions of the contract, but state what you were to carry out?

Objected to as being incompetent.

Ans. 60. I have stated what I was to carry out precisely and conclusively.

Int. 61. What were the terms of that decree to be?

Ans. 61. The terms and conditions of that decree were to be based upon the terms and conditions of the contract, so that
485 the contract by the decree would be carried out and fulfilled.

Int. 62. Can you state now what those terms were to be?

Ans. 62. I cannot.

Int. 63. Was one of the things that you were employed to do to see that all the taxes were wiped out that were wiped out by the decree?

Ans. 63. I was employed to see that the taxes were wiped out according to the terms and conditions of the contract, and I suppose it is the same.

Int. 64. As you understand it, then, the decree that was entered in this case wherein the taxes were wiped out is in conformity to the contract with Adam Smith?

Ans. 64. I suppose it to be.

Int. 65. How long did the commissioners and clerk remain in your office?

Ans. 65. Probably from three-quarters of an hour to an hour.

Int. 66. Was Adam Smith there with them?

Ans. 66. He was not.

Int. 67. Will you swear positively, Mr. Sessions, that you cannot be mistaken in stating that Adam Smith was not with the commissioners in your office?

Ans. 67. I am very positive that he was not. I am very positive that only three persons came to my office, to wit, two of the county board and the county clerk.

Int. 68. Was anything said to you about fees upon the occasion of their first consultation with you in your office?

Ans. 68. They said to me that Mr. Smith was to pay; it was to be at his expense; that Mr. Smith was to pay my fees in the case. I said to them that I would look to them; that I didn't care anything about who paid me, so I got my pay. They employed me, but they said to me in my employment that Mr. Smith was to pay.

486 Int. 69. After leaving the office where did you go?

Ans. 69. Directly to Mr. Touzalin's office.

Int. 70. Can you state about the time in the day you reached Mr. Touzalin's office?

Ans. 70. Well, I can't. Whether it was in the forenoon or immediately after dinner I can't tell.

Int. 71. Who was in Mr. Touzalin's office when you arrived there?

Ans. 71. I don't recollect that there was any one in the office excepting a young man, I think, was there by the name of Kenyon—Will. Kenyon, that used to write for him. I think he was in the office there, and I don't know but Mr. Smith. If he wasn't there he came in soon after. Then, the only persons there to my recollection were Mr. Touzalin, Mr. Kenyon, Mr. Smith, the two commissioners, and the clerk, and myself.

Int. 72. Are you positive that Mr. Smith did not go to Mr. Touzalin's office with you?

Ans. 72. That is my present recollection.

Int. 73. Are you positive that you went there with the commissioners?

Ans. 73. I would not say positively that I went with them. On reflection I am inclined to the opinion that they met me at my office in the forenoon, and that I was to meet them at the office after dinner, and whether I went with them or was to meet them at the office I can't tell.

Int. 74. Was Mr. Marquett, the attorney for the Burlington and Missouri River Railroad Company in Nebraska, there?

Ans. 74. No, sir; he wasn't. I didn't see him at all.

Int. 75. You say that you didn't see him at all?

Ans. 75. No, sir; up to this time I had never seen Mr. Marquett nor spoken to him in reference to this matter, and he was not there at all.

487 Int. 76. How long did you remain in Mr. Touzalin's office?

Ans. 76. Two or three hours, more or less.

Int. 77. What were you doing during that time?

Ans. 77. There was a paper got up that was their action in the matter; bond was made and another stipulation or paper of some kind made in which they authorized and directed me—employed me—to go on and do this, and papers signed by them and by me; these papers were drafted there at that time and bonds drawn and executed, and all the necessary papers for the purpose of carrying out the object they had in view.

Int. 78. What was that object?

Ans. 78. I have told you before—to have proceedings instituted by which the contract between the county of Boone and Adam Smith could be fully carried out.

Int. 79. You say there was a paper drawn employing you for that purpose at that time?

Ans. 79. Yes, sir.

Int. 80. Who drew that paper?

Ans. 80. My impression now is that they were drawn in this way, by joint dictation: Will. Kenyon was a very expert penman, and we dictated to him and he did the writing—that the writing was all done by Will. Kenyon.

Int. 81. Who suggested drawing that contract between you and the county of Boone?

Ans. 81. I can't tell.

Int. 82. Was it Mr. Touzalin?

Ans. 82. I couldn't state who did first suggest that?

Int. 83. State now what other paper was drawn—some one other paper that was drawn there. We have your contract between you and the county.

Ans. 83. There was another paper drawn there that went on and recited the terms and conditions of the contract——

488 Mr. COWIN: Just state one.

—and that they were to be carried out and what was to be done and certain matters and things. The conditions of that writing now I won't attempt to give.

Int. 84. Is that the paper a copy of which has been introduced here and which you say was read to the commissioners, that paper to which you have last testified?

Ans. 84. That paper to which I have last testified is the first referred to here in Exhibit A.

Int. 85. Do you know whether this paper was signed the date purported to be, Jan'y 30th, 1878?

Ans. 85. It was signed, but whether we were there the 30th of Jan'y I can't state; but the papers were signed while we were there at that time, but I can't state from recollection whether it was the last day of Jan'y or the first day of February.

Int. 86. Now, look at the second paper mentioned in this exhibit of the same day and state whether that was drawn at the same time

Ans. 86. Yes, sir.

Int. 87. The first one, as shown by this copy, purports to be signed by the Burlington and Missouri River Railroad Company in Nebraska, by A. E. Touzalin, land commissioner?

Ans. 87. Yes, sir.

Int. 88. He signed that there, did he, in his office?

Ans. 88. Yes, sir.

Int. 89. Do you know where John R. Clark signed the same paper?

Ans. 89. No, sir; I do not.

Int. 90. The second paper, dated Lincoln, Nebraska, Jan'y 30th, 1878, as shown by this copy, purports to be signed by the commissioners and M. H. Sessions, att'y for Boone county. Did they
489 sign it there that afternoon?

Ans. 90. Yes, sir; all signed it there together.

Int. 91. And you also?

Ans. 91. Yes, sir.

Int. 92. As has been stated, one of the commissioners states in his testimony that this paper, signed by the commissioners, was read to them by you, but that you did not read the lines as follows: "And to have a decree of court entered up in the circuit court of the United States for the district of Nebraska eradicating the whole of the taxes now charged against the lands of the first and third parties for the above years." Are you positive that you read to the commissioners this part of the language I have quoted, "The whole of the taxes now charged?"

Ans. 92. Yes, sir; they understood it perfectly well; it was talked over and was perfectly understood.

Int. 93. And you say that at that time you took them into another room?

Ans. 93. Yes, sir; after the contract was written out and before signing I went into another room with the commissioners and that contract was read by me to them and they looked it over for themselves—it was thoroughly understood—and went back and was executed.

Int. 94. And you are positive that it was understood there that the whole of the taxes were to be eradicated?

Ans. 94. I am positive that that contract, just as it was executed, was read to the commissioners word for word, and that they understood it in all its exact terms and conditions. I know they did.

Int. 95. You are certain that you did, are you?

Ans. 95. Yes, sir.

Int. 96. Now, to make this matter brief, the papers that were drawn there were such as you deemed necessary to carry out the Adam Smith contract?

490 Ans. 96. Well, I suppose they were necessary.

Int. 97. I mean the papers that were drawn there and signed were such as you deemed necessary and the railroad company to carry out the Adam Smith contract?

Ans. 97. Yes, sir.

Int. 98. Now, then, when did the commissioners leave?

Ans. 98. I think they left the next day after those papers were signed, but I am not positive.

Int. 99. When did you see Marquett in regard to this matter?

Ans. 99. I didn't see Marquett for some time.

Int. 100. About how long?

Ans. 100. I can't tell. It might have been a week or two weeks or three weeks. I have no data by which I can tell. I know it wasn't for some time afterwards.

Int. 101. Do you know whether a suit had been commenced in the United States circuit court to carry out the Adam Smith contract at the time of this conference in the railroad office in Lincoln?

Ans. 101. I don't know.

Int. 102. When did you first learn that such a suit was commenced?

Ans. 102. That I cannot tell.

Int. 103. State what next you did with respect to this matter after the commissioners departed.

Ans. 103. The first thing I done after I was notified in pursuance of it that the suit had been commenced—I don't know how long after—I went to Omaha with Mr. Marquett for the purpose of performing the duties of my employment; but I cannot tell how long it was after; it might have been two or three or four weeks.

Int. 104. State, Mr. Sessions, what relation the Hon. T. M. Marquett at that time bore to the Burlington and Missouri River Railroad Company in Nebraska.

Ans. 104. I supposed him to be—in fact I knew him to be—their attorney.

491 Int. 105. Where did you see Mr. Marquett in regard to this case?

Ans. 105. I haven't the least recollection in the world where I was when he first talked to me about it. Whether it was here in my office or his office I haven't the least recollection.

Int. 106. When did he first present to you the stipulation to be filed while you was in the case?

Ans. 106. That was at Omaha, while we were there at court.

Int. 107. Then that must have been several weeks after this consultation in the——

Ans. 107. It was some considerable time after, and, of course, before the date of the decree. I can't now tell when that was, for I can't recollect the date of the decree.

Int. 108. Did you go up with Mr. Marquett for the purpose of entering that decree?

Ans. 108. No, sir.

Int. 109. Did you go up with Mr. Marquett?

Ans. 109. No, sir. I have no recollection of going up to Omaha with Mr. Marquett during that term of court at all.

Int. 110. Where were you when Mr. Marquett presented this stipulation to you to sign?

Ans. 110. My present recollection is that it was in the court-room, at Omaha.

Int. 111. Had you then read the bill?

Ans. 111. I think I had.

Int. 112. When did you know, then, that the suit had been commenced?

Ans. 112. I knew it before—before I went up—but I say I can't tell the date.

Int. 113. Who informed you of it?

Ans. 113. I can't tell whether it was Mr. Marquett or some person about the office.

492 Int. 114. Will you now state, Mr. Sessions, without repetition, as near as you can, the contents of that stipulation?

Ans. 114. No, sir; I won't attempt to give any statement as to the terms of that stipulation. It was so long ago, and I have never seen it since I have signed it, and my attention has not been called to it since, and it is an absolute impossibility for me at this length to attempt to give any correct statement of that stipulation, and I will not attempt it.

Int. 115. But you know that you objected to the stipulation?

Ans. 115. I objected to the stipulation when presented and objected to the wiping out of taxes to the extent provided for in the stipulation.

Int. 116. And you refused to sign it, you say in your examination-in-chief, until you were furnished certificates of the clerk that the taxes were illegal? Is that so?

Ans. 116. Yes, sir; I signed the stipulation, finding that the terms of the stipulation as to the wiping out of taxes conformed and agreed with the certificate of the clerk of the board that Mr. Marquett presented to me.

Int. 117. And you refused to sign the stipulation until he furnished you these certificates?

Ans. 117. Yes, sir.

Int. 118. Well, Mr. Sessions, why did you refuse to sign that stipulation when you and the commissioners had three or four weeks before that signed an agreement for eradicating the whole of the taxes now charged?

Ans. 118. I thought I could get something better for the county if I did. That is why I done it. I tried to get something better for the county. That is the object I had in view at that time.

Int. 119. But when he pulled the certificates on you you surrendered?

Ans. 119. Yes, sir; I surrendered.

493 Int. 120. Then the decree was entered on this stipulation?

Ans. 120. Yes, sir.

Int. 121. And the decree is in conformity to that stipulation, is it?

Ans. 121. I so understand it.

Int. 122. There was no testimony taken or any matter submitted to the court, was there?

Ans. 122. No, sir.

Int. 123. Did you get pay for your services?

Ans. 123. I did, sir.

Int. 124. Who paid you?

Ans. 124. I can't tell which of the men paid me now; I never made a minute of it. I never made a charge in my book concerning the whole matter.

Int. 125. Do you remember how much you were paid?

Ans. 125. I can't tell.

Int. 126. Do you remember where you were paid?

Ans. 126. I think I was paid at two different times.

Int. 127. What makes you think you were paid at two different times?

Ans. 127. The simple fact that I have an indistinct recollection—something about it, but I never was positive about that. I was paid, I know, soon after the thing was closed, but I have never thought of it from that time till now. I never made a charge concerning the matter and for that reason I can't recollect.

Int. 128. Is it a common practice with you to do business of that importance and magnitude and not make any charge on your books?

Ans. 128. I frequently do. When parties pay the way they were and my only business with them is that and if I am paid as soon as the employment is through with and it is of short duration I do not make any note at all.

Int. 129. But how did you know that you would be paid as soon as the employment was through with?

494 Ans. 129. I was told that I would be paid by the commissioners, as I said before; that Adam Smith was to pay the expenses. I told them I didn't care how I was paid if I got paid when I was through with it. They said there would be no trouble about it, I would be paid, and I was paid.

Int. 130. But you told them that you would charge them?

Ans. 130. I told them that I would look to them for my pay.

Int. 131. Now, don't you consider, as a lawyer, that that is a peculiarly proper case for making an entry with respect to it on your books?

Ans. 131. I don't see anything very peculiar about it.

Int. 132. Isn't it somewhat peculiar where you assume the responsibility of a case for clients who are not expecting to pay you and you are expecting your pay from somebody else that you never heard of and don't know that he is in existence?

Ans. 132. I never expected my pay from somebody else. I expected my pay from them. When they said to me that Adam Smith was to pay the expense I told them that I didn't care anything about that; that I would look to them for my pay, but I didn't care who paid it, only so I got it; but that I would look to them and didn't expect it from any one else but the county.

Int. 133. Then you didn't expect to get your pay from Adam Smith—didn't look to him?

Ans. 133. I did not think anything about it more than I have told you. I looked to the county; they assured me I should have pay. I relied upon it and never thought a thing about it.

Int. 134. When were you first reminded, afterwards, of the matter of pay?

Ans. 134. In a very short time; I got my pay in a short time.

Int. 135. Where were you reminded of it?

Ans. 135. My impression is that by draft, and still I can't tell. I am sure it was by draft. It wasn't paid me by money. I am sure it was by draft.

495 Int. 136. By whom was it drawn?

Ans. 136. I can't tell you; never thought a thing about it after I got my pay, from that time to this.

Int. 137. Then the case was so simple a one and so clear to your mind that if that draft was drawn by A. E. Touzalin you wouldn't have thought anything about it, would you?

Ans. 137. I don't think it was drawn by him.

Int. 138. Well, that is not my question.

Ans. 138. I don't know whether I wouldn't or not; can't tell, but I don't think the draft was drawn by him.

Int. 139. Can you swear it wasn't drawn by the Burlington and Missouri River Railroad Company in Nebraska?

Ans. 139. I am very sure it wasn't.

Int. 140. Do you know upon whom it was drawn?

Ans. 140. No, sir; I can't tell that.

Int. 141. Do you know at what bank you got it cashed?

Ans. 141. No, sir; I can't tell. I know that I was going East about that time and had money, but whether I got the money here or kept the draft I cannot tell; and I was going East, to be gone two or three months, and I know that the money that I got from there I took with me, and whether I got the money here or whether I got the money in drafts—I know I carried two or three hundred dollars with me in drafts at the time that I went East.

Int. 142. At what bank did you at that time make your deposits?

Ans. 142. I think that I was making my deposits at that time at the First National.

Int. 143. Do you know where that draft was payable?

Ans. 143. No, sir.

Int. 144. Do you know the amount of that draft, or anywhere near it?

496 Ans. 144. Well, sir, it was in the vicinity of a hundred dollars.

Int. 145. If other payment was made by draft, do you know the amount of that?

Ans. 145. No, sir; and I ain't positive that there was any other payment made by draft; I ain't positive at all but what the whole payment was made in one. On reflection, I think it was.

Int. 146. You wasn't paid by Adam Smith, were you?

Ans. 146. I was paid by the county, as I supposed, and I knew no other person that I charged to or relied upon for pay.

Int. 147. When you received the draft was it in a letter?

Ans. 147. I think it was.

Int. 148. Who was the letter from?

Ans. 148. That I cannot tell.

Int. 149. It wasn't from any of the people of Boone county, was it?

Ans. 149. I can't tell who it was from?

Int. 150. Did you receive it through the mail?

Ans. 150. Yes, sir.

Int. 151. Did you make any entry of it on your books?

Ans. 151. No, sir; never in the world; never made a mark of the pen concerning that on my books.

Int. 152. Mr. Sessions, have you now, in my questioning and your answers, given me all the information you can, directly or indirectly, that would throw any light whatever upon the question where and how you got your pay for these services and who paid you?

Ans. 152. To the best of my present recollection, I have.

By consent and agreement of the attorneys for the complainant and respondents, respectively, the signatures to this testimony are waived.

Also, by agreement of said attorneys, the further taking of this testimony is hereby adjourned till Tuesday, September
497 16th, 1884, at the hour of 10 o'clock in the forenoon, then to be continued at the office of Miller and Price, att'ys, in the town of Albion, county of Boone, and State of Nebraska.

C. P. DRENNEN,
Special Examiner.

Pursuant to adjournment, as above stated, on the 16th day of September, 1884, at the hour of 10 o'clock in the forenoon, at the law office of Miller and Price, in Albion, Boone county, Neb.—T. M. Marquett, Esq., appearing for the respondents, and J. S. Miller, Esq., for the complainant—I resumed the taking of said testimony as follows, viz:

And also the said JOHN PETERS, being about the age of 40 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said John Peters, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MARQUETT:

Int. 1. What is your name, age, and place of residence?

Ans. 1. Name, John Peters; age, forty years; residence, Albion, Boone county, Nebraska.

Int. 2. How long have you been a resident of Boone county?

Ans. 2. Thirteen years this coming fall.

Int. 3. What, if any, public position or office have you held?

Ans. 3. Held the office of county clerk since October, 1873.

Int. 4. Have you had it continuous?

Ans. 4. Have held the office of county clerk continuous since October, 1873.

Int. 5. You were county clerk, then, in the year 1877?

Ans. 5. Yes, sir.

498 Int. 6. Do you know anything about a contract made with Adam Smith in reference to—among other things, in reference to the taxes on the Burlington and Missouri River Railroad Company's lands for the years 1873 to 1877, inclusive? If so, you may state what you know about the making of that contract with the board of county commissioners, if anything.

Objected to as being incompetent and immaterial.

Ans. 6. Well, now, I can answer that question, of course, to obviate the asking of several other questions. I could give it in a narrative form and commence at the beginning and give—is that the way you want it?

Int 7. Just in as few words as possible you may state what you know about it.

Ans. 7. Well, in the summer of 1877 Adam Smith, of Chicago, called at my office and made a general inquiry relative to lands—to the lands in Boone county—relative to the B. & M. lands, rather. He staid a day here and derived such information and such statistics concerning the county as I had to give him, stating that he was here with an object or view of perhaps purchasing quite a quantity of land. Among other things, he required of the title to these lands, and also the taxes on the same. He then went away and came back in a short time again—that is, I don't remember just what time it was, but he went away and came back and made further inquiries concerning the same—inquired of the county commissioners where they lived—and then he submitted a proposition to me or wanted to know from me how a certain proposition would be entertained by the people of this county relative to the settlement of these lands. After disclosing his plans to me, stating what he proposed to do, I at once fell into his plans or with his object; thought, perhaps, something could be done in regard to entering into a contract with the county commissioners by him—pur-
499 chasing certain quantities of land if the taxes could be released. He then went to see the county commissioners, and came back and requested me to call a meeting of the board of county commissioners, which I did. The county commissioners met with Adam Smith and such few people as there were here in town—a few around the country near by—and talked the proposition over that he finally submitted to the commissioners at that time. The county commissioners remained in session two or three days before taking any action on his proposition, as they felt it was a matter that concerned the county—that was of vital importance to the county—and did not want to act until they obtained the consent of tho prominent men of the county at that time. They sent out and called the people together—as many as they could get in the court-house. After they were here this proposition of Adam Smith was then read to the county commissioners.

Int. 8. After the people assembled?

Ans. 8. Yes; after the people were together there in the court-house—I forget the number, but there was quite a number of the people that was sent for to talk the matter over with the county commissioners—Mr. Smith then submitted a certain proposition. I have got the proposition with me. We then——

Int. 9. You still have that, do you? Let me look at that, will you?

Ans. 9. That is Adam Smith's contract (producing a paper).

Int. 10. Is that the original?

Ans. 10. That is the original; yes, sir.

Int. 11. Do you know whether the proposition was the same as they agreed upon afterwards?

Ans. 11. Yes; the proposition that they submitted and the contract. They made a contract at that time.

Int. 12. Is this Exhibit "A" attached to the evidence introduced by the complainant? (Here the Exhibit "A" in the evi-
500–505 dence introduced by complainant is shown witness.) Is that the contract made with Adam Smith and the commissioners?

Ans. 12. Yes, sir; that is it.

Int. 13. Or is that a true copy of the contract made with Adam Smith and the commissioners?

Ans. 13. That is. Now I will go on to state. Then, after this contract was read to the county commissioners, the matter was discussed by the board with the people that was then assembled in the court-house, and after talking the matter—fully discussing the matter—it was the unanimous choice of the board and also of all the people in the court-house to enter into that agreement with Mr. Smith, thinking it was for the best interests of the county that the proposition and contract of Mr. Smith be accepted; and it was fully understood, and distinctly understood, at that time that in accepting that contract that the county commissioners were to abate or release all the back taxes from the year 1857 to 1877, inclusive, entirely, as Mr. Smith said unless that was done he had no further business here; that he could not take the lands and dispose of them unless those taxes were settled.

Int. 14. What next happened in reference to that agreement or the matters pertaining to it after this meeting?

Ans. 14. After the adoption of that contract?

Int. 15. It was adopted by the board of commissioners, was it?

Ans. 15. Yes; or the acceptance, you might say. The commissioners adjourned and the matter was then discussed throughout the county, and it generally met with favor by all the inhabitants of the county. Nothing more then had been done until Mr. Smith, in the fall of the year, had commenced his work.

Int. 16. What work? Just state that.

Ans. 16. Nothing further had been done until Mr. Smith had commenced work on the graded wagon road. He brought a
506 grading machine, a lot of men and horses, built them a large house, and started operations on the graded wagon road, which was a part of the contract as entered into by the county commissioners. This graded road was to commence at Albion, the county-seat of Boone county, and terminate at Silver creek, a point on the Union Pacific railroad, in Merrick county. The distance of the road was somewheres in the neighborhood of 35 or 40 miles—say, 40 miles.

Int. 17. Was there any bridges to build?

Ans. 17. Yes, sir. In building this road there were a great many bridges to be built. The principal, largest bridge was bridging the Loup river. All the streams on the line were bridged, and deep gulches, ravines, and in doing this work it occupied—or from the

time he commenced it lasted until along in the winter or in fact until about January; some time along in the latter part of January the work was completed.

Int. 18. January, what year?

Ans. 18, 1878. After the completion of this road the county commissioners then went down to Lincoln and carried out their part of the agreement—for the purpose of carrying out their part of the agreement between Adam Smith and the county.

Int. 19. When was that?

Ans. 19. At Lincoln.

Int. 20. When?

Ans. 20. That was on the 30th day of January, 1878.

Int. 21. Did all the commissioners go down?

Ans. 21. Yes, sir.

Int. 22. Who went with them?

Ans. 22. I went with them, three county commissioners, and the clerk, — myself.

Int. 23. Well, you may state what was done down there.

507 Ans. 23. After arriving at Lincoln the county commissioners employed Mr. M. H. Sessions, an attorney of Lincoln, to carry out their part of the agreement.

Int. 24. The Adam Smith agreement?

Ans. 24. The agreement with Adam Smith.

Int. 25. Were you by and heard any of the conversation that passed between the commissioners and Mr. Sessions in reference to this matter? If so, you may state what was said and done.

Ans. 25. Yes, sir; I was present during the entire time or meeting of the county commissioners with Mr. Sessions. They employed Mr. Sessions to carry out the agreement as entered into by Mr. Smith. The agreement was present there. They showed the agreement to Mr. Sessions and requested him, as attorney for the county, to carry out the conditions of that agreement for the county. The matter had been discussed fully by Mr. Sessions and the county commissioners.

Int. 26. What, if anything, was said at this time about the efforts that had been made to collect these taxes on the B. & M. lands and the failure to collect any?

Ans. 26. The county commissioners had stated to Mr. Sessions that for several years they had been endeavoring to collect these taxes. The railroad company had refused to pay them for several reasons—the enormous assessments on the lands, then the illegality of certain levies, and also the question as to the ownership of the lands.

Int. 27. Whether they owned them or not?

Ans. 27. Yes; whether they owned them, being in doubt whether the railroad company owned those lands at that time, as there was during this time or part of that time a suit entered in the United States district court against the railroad company for the recovery of these lands.

Int. 28. By the United States?

Ans. 28. By the United States. The county commission-

508 ers had further stated to Mr. Sessions that they had offered at different times to settle with the railroad company these taxes, and had instructed their county treasurer to correspond with the railroad company and offer to take a certain per cent. or a certain amount of the tax in lieu of the whole.

Int. 29. Do you know what that per cent. was?

Ans. 29. Mr. Bollman, the county treasurer, was empowered by the county commissioners to settle with the railroad company for eight thousand dollars in lieu of all taxes, which the company refused to do, claiming they wasn't justly entitled to pay those taxes. The per cent. would be at that time about 15 or twenty per cent. I don't remember just exactly what it was. And the county entered suit against the railroad company for several years. They were then in court.

Int. 30. Was it the county that entered suit or was it the railroad company?

Ans. 30. The county had entered suit against the railroad company for these taxes, but failed to make any collections. They had further stated to Mr. Sessions that in this agreement with Adam Smith that as part consideration for these taxes they was to accept this graded wagon road, properly built and bridged, from Albion to a point on the Union Pacific railroad.

Int. 31. Was this a public highway—this road where Smith built this road, did this work?

Ans. 31. Yes, sir; it was a public highway.

Int. 32. Do you know how much work he did on this for Boone county; what the value of the work in building the road was?

Ans. 32. I don't know the exact figures for the value of that work, but understand that the expense of building and bridging this road was about twenty thousand dollars.

Int. 33. Did you make any of the payments for the bridges or anything for Smith? What is your means of knowledge, of knowing what this work done for Boone county by Adam Smith

509 was worth?

Ans. 33. Well, my means of knowing is partly from payments that I had made for Mr. Smith for this work and from the accounts that Mr. Smith had paid—the bills that he had paid.

Int. 34. Do you recollect anything further said or done at Lincoln. If so, state what it was.

Ans. 34. You mean with Mr. Sessions at that time?

Int. 35. In reference to the settlement of these taxes done at Lincoln while you were there?

Ans. 35. I will say that the whole matter had been talked over, thoroughly discussed, and the reason why the commissioners went to Lincoln—they told Mr. Sessions they came down to Lincoln where they could do the business better.

Int. 36. Did they enter into any writings there?

Ans. 36. Yes, sir.

Int. 37. You may look at this, commencing there. I asked you if they entered into any writings there. Now you may look at Exhibits B, C, and D, as attached to the evidence of complainant.

(Here the exhibits attached to the evidence of complainant are shown witness.) Look at those and see if those were the writings that were drawn up there? I believe those are the exhibits.

Ans. 37. They are the exhibits; yes, sir. Those writings were drawn up between the county commissioners and Mr. Sessions and Adam Smith and the B. & M. Railroad Company as a statement of the agreements between the county commissioners and Adam Smith.

Int. 38. Now look at Exhibit B and see if that is as there drawn up and signed, and see if it——

Ans. 38. Yes; that is the original agreement, signed by the county commissioners and attested by myself as county clerk.

Int. 39. Do you know who read that to the county commissioners or how?

510 Ans. 39. Yes, sir. I will state that after these papers and exhibits had all been written and drawn up that I, as clerk of the county commissioners, read each one separate to the board of county commissioners. After the reading of the same they then attached their signatures—signed them.

Int. 40. Now, do you recollect of reading Exhibit B to the county commissioners?

Ans. 40. Yes, sir.

Int. 41. Was it read as it appears there?

Ans. 41. It was.

Int. 42. Did Commissioners Broadbent and Bowman—did they hear it read?

Ans. 42. Yes, sir. They were all present.

Int. 43. They, Bowman and Broadbent, in their evidence state that this latter part of the conditions in Exhibit A—that is, in reference to eradicating the whole of the taxes now charged against the lands of the first and third parties for the above years, all of said taxes having been examined and agreed upon as illegal and void—they claim that that part was not read to them, and that they didn't know that that was in the agreement. How about that?

Ans. 43. It certainly was. In reading over the matter I remember distinctly of reading that part of the contract very clearly, and they understood it before attaching their signatures to the same.

Int. 44. What, if anything, was said and done about the payment of the expenses caused by going to Lincoln on this—in reference to the matter of these taxes?

Ans. 44. After the work or the business was all completed, and the next morning——

Int. 45. By that you mean after all these papers had been prepared and signed?

Ans. 45. Yes; after all these papers and, in fact, after the whole matter had been completed, the papers signed and drawn up.

511 Before starting for home Mr. Smith paid, or gave, rather—gave me the money to cover the expenses of the county commissioners for their time and expenses while at Lincoln, stating that, as he would have to pay a large portion of the taxes, *that* he might as well pay those expenses now as to pay it in the shape of

taxes, and I paid the county commissioners then with the money that Mr. Smith paid me. I was paymaster.

Int. 46. What were those expenses paid?

Ans. 46. The expenses paid included their railroad fare—all the expenses from Albion at that time. We went by stage from Albion to Columbus; and their railroad fare to Lincoln and their *per diem* while they were engaged in this business.

Int. 47. Same as they would have been allowed to be paid by the county?

Ans. 47 Yes; and their mileage and *per diem.*

Int. 48. Was this matter ever referred to—this matter of settlement and these papers that were drawn up at Lincoln—ever referred to by the commissioners when they were in regular session here in Boone county? If so, what was done?

Ans. 48. At a regular commissioners' meeting, held February 4th, 1878, being the first session of the board after this settlement, the board passed a resolution ratifying and confirming all matters and things pertaining to the Adam Smith contract and the settlement of these taxes.

Int. 49. Was there any public meetings held in reference to this settlement of taxes; and, if so, when?

Ans. 49. Yes; there were three meetings held. The first meeting was held in the spring of 1878. I don't remember the date. It was called by a few men in the county, and termed an indignation meeting. It was largely attended by people from all parts of the county. Statements had been made by three or four indi-
512 viduals that the county commissioners had betrayed the county and were bribed and said there was fraud used in the settlement of these taxes. I was present at the meeting, and after the statements had been made by three or four charging the county commissioners with fraud, I then had taken the stand and made the exhibit and statement as confirmed by the county commissioners, then these parties that had charged fraud again took the stand and said that they didn't believe that the county commissioners had been bribed or that there was any fraud used; and the sentiment of the people at that time, after the meeting had closed, was in favor of the county commissioners.

Int. 50. Do you know whether this was before or after the decree had been entered enjoining the taxes?

Ans. 50. It must have been after.

Int. 51. Were the county commissioners present?

Ans. 51. They were not.

Int. 52. Was there any other meetings at which the county commissioners were present? If so, state when they were and what took place.

Ans. —. Some time after this first meeting the county commissioners gave notice of a public meeting to be held at the courthouse for the purpose of hearing their side of this tax settlement.

Int. 53. *Who* were the names of the commissioners then?

Ans. 53. The commissioners at that time were Thomas Wilkinson,

Edwin Broadbent, and T. H. Bowman, and that meeting was largely attended.

Int. 54. About what time was that?

Ans. 54. I don't remember the date of that. It was some time after the first. It might have been along some time in April or May, possibly—along at that time. At that meeting the county
513 commissioners gave a full statement of their actions and doings, and it met with general favor by the people of the county.

Int. 55. Was it known at that meeting what Mr. Sessions had done?

Ans. 55. Yes, sir.

Int. 56. As the attorney in the courts?

Objected to as being incompetent and immaterial.

Ans. 56. Yes, sir; it was known, the exact position of Mr. Sessions, because the decree had then been entered up, and it was generally endorsed.

Int. 57. Was it known that Sessions had agreed to the decree as entered?

Ans. 57. Yes, sir; it was known at that time.

Int. 58. At this time did the county commissioners know just what Mr. Sessions had done in reference to agreeing to a decree wiping out all the taxes?——

Objected to as being incompetent.

If so, you may state how they knew it.

Ans. 58. Yes, sir; the county commissioners knew what the decree of the court was, as they had then a copy of the same from the clerk of the court.

Int. 59. I asked you if they knew what Mr. Sessions—whether he had agreed to the decree?

Ans. 59. Yes; I thought I answered that. If they had known that Mr. Sessions had gone into the court and agreed to the wiping out of the taxes.

Objected to as being incompetent.

Int. 60. Now, you may go on to state any further public meetings. The commissioners were endorsed in this meeting, you stated?

Ans. 60. Yes, sir.

Int. 61. How many were here in this second meeting you speak of—how many were present?

Ans. 61. I don't remember exactly; the court-house was
514 full; possibly in the neighborhood of a hundred. The county at that time was not very thickly populated and a hundred was considerable of a gathering.

Int. 62. How had this meeting been published? What means had the public of knowing that a meeting would be held of this kind?

Ans. 62. It was made known by sending men throughout the

county and notifying the people that on a certain day this meeting would be held.

Int. 63. Was the notification general, or only to special persons?

Ans. 63. It was general; it was published in the newspaper; general notice was had throughout the county. Some time after this meeting there was then a notice published again for a ratification meeting. The notice was general; it was given generally throughout the county, as well as being published, that at a certain day there would be a meeting at the court-house in Albion for the purpose of ratifying the action of the county commissioners. Mr. Smith was present, the county commissioners were present, and Mr. Touzalin was present. The whole subject-matter had been discussed at that meeting, for and against this tax settlement, and out of a meeting of between, I should judge, two hundred and two hundred and fifty, or, we will say, between two and three hundred, when a vote was taken it was almost unanimous; there might have been possibly a half a dozen that voted against it on confirming the action of the county commissioners in their doings relative to this matter.

Int. 64. Was it known at this time that there had been a decree entered by consent wiping out all the taxes?

Ans. 64. Yes; it was known because we had a copy of the
515 decree, and it was also stated at the meeting by different ones—by the county commissioners, by Mr. Touzalin, and Mr. Smith—the exact status of the case.

Int. 65. Just what had been done?

Ans. 65. Just what had been done, and it met with such general favor that, of course, we supposed that was the last of it. I would further say that I should judge from the conversation that I had with men throughout the county that were not at that meeting, after knowing all the facts in regard to this matter, that seven-eighths of the people of Boone county were in favor of it at that time.

Int. 66. Now, do you know what effort, if any, had been made by the treasurer of Boone county to collect these taxes—that is, the tax on the Burlington and Missouri River Railroad Company in Nebraska lands—for the years 1873 up to and including the year 1877?

Ans. 66. Well, they had made—the treasurer had made—all the efforts that possibly could be done in collection of these taxes. He had corresponded with the company, sent them statements of the amount of taxes, and offered their lands for sale; but no one would purchase the lands at tax sale, as the matter was in doubt, though, perhaps, they could not purchase the lands as the company had no title to them—were afraid of them. They had on several years at different occasions advertised their lands, offered them for sale, and no one would buy.

Int. 67. Were you acquainted with the value of lands in the year 1873 in Boone county?

Ans. 67. Yes, sir.

Int. 68. Were you acquainted with the value of the Burlington

and Missouri River Railroad Company's lands in Boone county in the year 1873?

Ans. 68. I was.

Int. 69. What was the fair cash value of those lands in that year?

516 Ans. 69. At that time, there being so much vacant Government land in the county that lands for sale—really there was no value fixed for them. There was no price that you could fix for them. Now the lands that the company owned at that time embraced some of the best land as well as some of the poorest land in the county, and the very best lands were not worth more than Government prices, which was a dollar an acre—the very best lands. The poorest would not bring more than twenty-five cents an acre. I would say, if the lands were to be sold or there was any one wishing to buy land, that the price would range from twenty-five cents to a dollar and a quarter an acre.

Int. 70. Were you acquainted with the value of these lands in the year 1874?

Ans. 70. Yes, sir.

Int. 71. What was their fair cash value at that time?

Ans. 71. I guess the same as in 1873; don't think there — any difference.

Int. 72. Were you acquainted with the value of these lands in 1875?

Ans. 73. Yes, sir.

Int. 74. What was their value in that year, per acre?

Ans. 74. Well, I don't think there could be much difference, even in that year, yet. The grasshoppers came along about that time, and lands wasn't worth anything. I think that was the first grasshopper year we had.

Int. 75. Were you acquainted with the value of these lands in 1876?

Ans. 75. I was.

Int. 76. That is, the value of the Burlington & Missouri River Railroad Company in Nebraska lands?

Ans. 76. Yes.

Int. 77. What were they worth in the year 1876, in Boone county?

517 Ans. 77. Well, at that time we had begun to receive a little better emigration into the county and lands were looking up some—that is, the Government lands were being, the best of them, taken, and the B. & M. railroad lands at that time probably would have sold from twenty-five cents an acre—some of it ain't worth that to-day—twenty-five cents an acre to about a dollar and a half to a dollar and seventy-five cents.

Int. 78. Were you acquainted with the lands of the Burlington and Missouri River Railroad Company in Nebraska in the year 1877, in Boone county?

Ans. 78. I was.

Int. 79. What was the fair value of the lands that year in Boone county?

Ans. 79. About the same as 1876.

Int. 80. What relation was Adam Smith to the Nebraska Land and Live Stock Company? It sometimes goes under Adam Smith and sometimes under Live Stock Company. I want you to explain that.

Ans. 80. Adam Smith was president of the Nebraska Land and Live Stock Company.

Int. 81. Was that contract of his—did the Nebraska Land & Live Stock Company carry it out, or how was that?

Ans. 81. The contract was carried out by the Nebraska Land and Live Stock Company—the Adam Smith original contract.

Int. 82. Was there any consent to this by the county commissioners?

Ans. 82. Yes, sir; perfectly satisfied.

Int. 83. Now you may state whether the building of this road agreed upon by Adam Smith was ever built as per the agreement made by him and the county commissioners, and whether the bridges were ever built as agreed upon in that contract.

Ans. 83. Yes, sir; they were.

Int. 84. Were they ever accepted as being built—as being completed—by the county commissioners?

Ans. 84. They were.

Int. 85. Now, Mr. Peters, what, if anything, do you know
518 in reference to Adam Smith or the Nebraska Land and Live Stock Company bringing settlers and causing men to settle upon the land purchased by them of the Burlington & Missouri River Railroad Company in Nebraska? State all you know about that matter.

Objected to as being incompetent and immaterial.

Ans. 85. I know, after the settlement of this tax question and even before it was settled, Mr. Smith had then commenced to advertise Boone county.

Int. 86. To advertise it?

Ans. 86. Yes, sir; to advertise it. Mr. Smith had got up a lot of maps; had maps printed and pamphlets printed—a large number of them—and distributed through the Eastern States. Now, on this map was shown in particular this graded road, and by means of this road showing a direct line from the U. P. railroad to Albion it gave a prestige to Boone county over any county adjoining us, and, through the work and expense of Adam Smith, Boone county had commenced at that time to settle very rapidly. Mr. Smith had agents in Chicago and New York, Iowa, and Milwaukee—in fact, scattered through the different Eastern States—advertising Boone county lands and sending people here to this county, and Mr. Smith was the direct cause of bringing a great many settlers here that we probably would never have received; brought a great many men here of means—wealthy men from Chicago—that expended a great deal of money here in the county in the way of improvements and bringing stock and different ways.

Int. 87. Was this wagon road, built by Mr. Smith to the Nebraska Land and Live Stock Company, of much utility to Boone county?

Objected to as being immaterial and incompetent.

Ans. 87. Yes, sir; it gave the people of Boone county a more direct and shorter road to market.

519 Int. 88. What was the effect of the settlement of these taxes, of the entering that decree wiping out the taxes, and of the carrying out of the Adam Smith contract by him or by the Nebraska Land and Live Stock Company upon Boone county?

Objected to as being incompetent and immaterial.

Ans. 88. It gave to Boone county a general prosperity—that is, it had the effect of imposing confidence in the people that were here and bringing people here that we never would have had if these taxes hadn't been settled. It seemed to add hope and prosperity to the welfare of the county.

Cross-examination by Mr. MILLER:

Int. 1. You say that in the settlement of these taxes in the manner in which they were settled, in eradicating or releasing all the taxes for those years for no other consideration than the building of this road, had the effect to give prosperity to Boone county. Now, isn't it a fact that up to 1878 Boone county, in common with the balance of the State of Nebraska, had been under a cloud, caused by the failure of crops, grasshopper raid, and like calamities, and isn't it a fact that at that time the whole entire State received a large immigration and was generally prosperous?

Ans. 1. It is true that during the years 1873, 1874, and 1875 Boone county, along with the other counties, had suffered from the effects of grasshoppers, but after the settlement of these taxes in 1878 the State had recovered from the effects of the grasshoppers, and, by reason of this settlement and Mr. Smith's influence, Boone county received a larger share of immigration than any county adjoining it, and, through the influence of Mr. Smith and the settlement of these taxes, we commenced selling the railroad lands of Boone county at once, which was not the case in any county adjoining Boone that had railroad lands.

520 Int. 2. Who sold the railroad lands in Boone county?

Ans. 2. Up to 1878 there were no lands sold, or with the exception of a few small tracts. In this contract with Adam Smith Mr. Smith purchased a large tract of land from the railroad company. Then the railroad company established agencies throughout the Eastern States, as well as this State, for the sale of this land; established agents in Boone county. After the settlement of these taxes I sold a great portion of the railroad lands to this county.

Int. 3. Did Adam Smith sell the lands that he purchased from the railroad company?

Ans. 3. He did.

Int. 4. Did he sell it for an advance price from what he paid for it?

Ans. 4. He certainly did.

Int. 5. Adam Smith made money, in short, out of his contract, didn't he, in purchasing lands?

Ans. 5. I presume he did. If he didn't he was different from most people.

Int. 6. Adam Smith's land was benefited by the building of this road wasn't it?

Ans. 6. Adam Smith had no lands up to the time that road was built.

Int. 7. You are sure of that?

Ans. 7. I am sure of that.

Int. 8. Then he purchased the lands after he built this road, did he?

Ans. 8. No, sir; he had a contract with the railroad company that after the completing and doing this work he was to get those lands at a certain price.

Int. 9. How much of this road from here to Silver creek is in the limits of Boone county?

Ans. 9. I should judge about fifteen or sixteen miles; I don't know positively.

Int. 10. In what counties is the balance of it located?

521 Ans. 10. In Nance and Merrick counties; was then the Pawnee reservation.

Int. 11. How many of the bridges that were built on that line of the road were in Boone county?

Ans. 11. I don't remember exactly, but I should judge about a half a dozen—say, six of them.

Int. 12. What streams do they cross?

Ans. 12. I don't know the names of all these creeks that run down there—these dry ravines.

Int. 13. They are all dry ravines, are they?

Ans. 13. They are large ravines or gulches that are dry this time of the year.

Int. 14. Do you know what the bridges cost in Boone county?

Ans. 14. I do not.

Int. 15. Do you know what the grading of the road cost in Boone county?

Ans. 15. No; not exactly, because I do not know what Mr. Smith paid out on the entire work.

Int. 16. Do you remember what the cost of the bridge over Loup river was?

Ans. 16. It cost between five and six thousand dollars.

Int. 17. That bridge is in Nance county, isn't it?

Ans. 17. It is now in Nance county; it was originally built in the Pawnee reservation.

Int. 18. Was it ever in Boone county?

Ans. 18. No.

Int. 19. Now you say in your direct examination that the work on this road cost about twenty thousand dollars?

Ans. 19. I should judge about that.

Int. 20. Now, then, can you approximate at what the work on that road lying in Boone county cost?

Ans. 20. No; I am no engineer; I could not.

Int. 21. You say there are about thirty-five miles of that road?

522 Ans. 21. No; between thirty-five and forty or forty and forty-five; I don't know; about that, I should judge; about half, probably, in Boone county. No; not quite half.

Int. 22. Isn't it a fact that the most expensive part of that road lies outside the limits of Boone county?

Ans. No; I don't know that it does. Outside of the Loup river bridge, I suppose the most expense is in Boone—harder work to build it—more bridges.

Int. 23. Now, you say you paid some of the bills for Mr. Smith in the building of this road, did you?

Ans. 23. I did.

Int. 24. Was you the agent of Mr. Smith—acting as his agent?

Ans. 24. I was not agent for him.

Int. 25. You was clerking for him?

Ans. 25. No, sir.

Int. 26. Wasn't you the agent of Mr. Smith at the time he made this contract?

Ans. 26. I was not; had nothing to do with any of his business—in fact, he was an entire stranger to me.

Int. 27. Now, you say that in 1873 there was no sales for land in Boone county, and that the lands of B. & M. Railroad Company were worth from twenty-five cents to a dollar and a quarter an acre. Have you ever known any lands to sell for twenty-five cents per acre?

Ans. 27. Yes, sir; and dear at that.

Int. 28. What proportion of the B. & M. lands in Boone county was worth not more than twenty-five cents per acre?

Ans. 28. I should judge, about one-sixth.

Int. 29. They were only worth twenty-five cents an acre?

Ans. 29. At that time. Of course, they are worth more than that now.

Int. 30. What proportion of their lands have you known to have sold for twenty-five cents an acre?

523 Ans. 30. Oh, I don't remember; but there was quite a large tract of it that was offered at that, and even could not get buyers at that.

Int. 31. When was that?

Ans. 31. That was up until two or three years ago.

Int. 32. Where was that land located in the county?

Ans. 32. In the northwestern part.

Int. 33. In what is known as the Bonanza district?

Ans. 33. No.

Int. 34. It was in the extreme northwestern limits of the county, wasn't it?

Ans. 34. No.

Int. 35. You say the treasurer had made all the efforts he could to collect the taxes, but no one would buy. Isn't it a fact that no one was purchasing tax-sale certificates in this county at that time of any lands whatever?

Ans. 35. No, sir; it is not a fact.

Int. 36. How much of the land was sold per year and tax certificates given in Boone county of the land?

Ans. 36. I don't know the amount, but I know there were parties here to take up every piece of land that was offered for sale on tax certificates that was owned by private individuals.

Int. 37. How much of the Government homestead land or deeded land to individuals—yes, how much taxable land was there in Boone county, outside of the railroad lands, during the years 1873, 1874, and 1875?

Ans. 37. I don't remember; I can't remember that.

Int. 38. Well, isn't it a fact that there was very little?

Ans. 38. Well, I don't know what the amount was. Of course, I don't remember without, possibly, going up to the records and finding out what it was. I don't remember.

Int. 39. Well, you can say it was little or much, can't you?

Ans. 39. Well, there was probably more than people would have any idea of. There was a great many people came in here
524 and entered land for pre-emption, got their title as soon as they could after entering it, within six months after entering the land.

Int. 40. Now, you say there were three meetings called concerning this settlement, at the first of which the general sentiment was favorable to the action taken by the county commissioners?

Ans. 40. Yes, sir; in fact, it was to be a boom for the parties that was opposed to it, and it terminated to be a boomerang before they were through with it.

Int. 41. Then why did the commissioners call another meeting?

Ans. 41. Because they were not present at the first meeting, and wanted their side of the case stated properly—correctly; that is why they done it.

Int. 42. Well, they did it, did they?

Ans. 42. Yes, sir; they did for a fact.

Int. 43. And the people were with them?

Ans. 43. They were.

Int. 44. Well, then, why did they call the third and ratification meeting?

Ans. 44. They called then the third meeting as the interest of the whole—that is, it wasn't got up for any particular side; it was called for the purpose of having the people assemble here and hear the statements of the B. & M. Railroad Company through Mr. Touzalin and through Mr. Smith and parties that hadn't taken any part in the other meeting, and there was so much talk spread out by a few concerning the matter that they determined to call a meeting of the people of all sides—people that hadn't had anything to do with it—and when they got them there they were almost unanimous with the county commissioners.

Int. 45. Isn't it a fact that this last meeting was called
525 upon the special instance and request of Mr. Touzalin and Mr. Smith?

Ans. 45. No, sir.

Int. 46. Who procured Mr. Touzalin to come here and speak to the people at that meeting?

Ans. 46. That I don't remember.

Int. 47. He was here, wasn't he?

Ans. 47. He was here.

Int. 48. He spoke to them, didn't he?

Ans. 48. I think he did. I think that after we determined to hold this meeting it was suggested by some one that it would be well to send for Mr. Touzalin to be here at that time, and that we could hear the statement from him individually, in place of giving second-handed from anybody else the position of the railroad company in relation to the Adam Smith contract—the whole transaction.

Int. 49. Then, as a matter of fact, there was some question in the county during all this time relative to the expediency of this movement, was there not?

Ans. 49. No, sir; never was.

Int. 50. Well, then, please explain what the necessity was for all these ratification meetings and efforts to convince the people that it was all right.

Ans. 50. Well, in the first place, these were not all ratification meetings. The first meeting was called at the instance of a very few, possibly not to exceed half a dozen men, that wasn't in favor of the Adam Smith contract. These few, for some cause that I don't know, called a meeting for the purpose of condemning the action of the county commissioners, and at that meeting, or at the close of that meeting, the people there were in favor of the action of the county commissioners. That was the first meeting. The next meeting the county commissioners called for them to give their side of the question of this settlement; it had been grossly mis-
526 represented by the few at the first meeting. Then the county commissioners called this meeting for the purpose of presenting their side of the case. At the close of the meeting the people were with them. Then this last meeting was got up for all sides; it wasn't any person in particular. The last meeting, then, after the first two meetings was called, was got up for the purpose of giving an expression of the people throughout the county on this whole subject-matter, and it was done for the purpose either to ratify or reject the action of the county commissioners; and at the close of that meeting, the largest meeting of all three that had ever been held before, the entire multitude that were there endorsed the commissioners, with the exception, possibly, of five or six.

Int. 51. Did you keep the record of those meetings?

Ans. 51. No.

Int. 52. Can you give the names of any of the men who were present?

Ans. 52. Yes.

Int. 53. Was Job Green there?

Ans. 53. He was.

Int. 54. At all three of them?

Ans. 54. I don't remember now whether he was at all three or not.

Int. 55. Tell us, if you remember, which meetings he attended?

Ans. 55. He attended the last of them.

Int. 56. Was Mr. Broadbent there?

Ans. 56. Yes.

Int. 57. At all three of them?

Ans. 57. He was not.

Int. 58. Tell us at what meetings Mr. Broadbent was there.

Ans. 58. The last two.

Int. 59. Was Mr. Loran Clark there?

Ans. 59. He was; at all three.

Int. 60. Was Mr. Peter J. Files present?

Ans. 60. He was.

527 Int. 61. Was Mr. Andrew Young?

Ans. 61. I don't believe Mr. Young was in the country at that time. He wasn't here.

Int. 62. Was Mr. Wilkinson present?

Ans. 62. He was at the last two.

Int. 63. Did all these men approve of the action of the commissioners?

Ans. 63. Well, I don't know that they did. I think that Mr. Clark was one of what we might term "the kickers" at that time. He was in favor of it at the first original contract of Adam Smith, then afterwards he opposed it.

Int. 64. Will you give me the names of some of the parties who were present and in favor of the movement?

Ans. 64. Well, there was Weitzel, Mr. Willet, Mr. Henry Willet, Mr. William Willet, Mr. Barnes, Mr. Van Camp, Mr. Widaman, Mr. Downs, Mr. Curry, Mr. Lapping, Mr. Daniels.

Int. 65. Was Broadman there?

Ans. 65. Don't remember whether Broadman was there or not.

Int. 66. Daniels?

Ans. 66. Mr. Daniels was there, Mr. John Armstrong, Mr. Maricle——

Int. 67. All these meetings were held after the entering of the decree in the United States court, were they not?

Ans. 67. They were.

Int. 68. At the time of this meeting in Lincoln, in January, 1878, was Adam Smith present at that meeting in the office of Mr. Touzalin, land commissioner of the Burlington and Missouri River Railroad Company?

Ans. 68. He was.

Int. 69. Did he go from here down to Lincoln with you?

Ans. 69. He did not.

Int. 70. Where did you first meet him, on your way down or when you got there?

Ans. 70. I think at Lincoln.

Int. 71. He went with you, did he, to the office of Mr. Touzalin?

Ans. 71. No, sir; he did not.

528 Int. 72. Where did you go when you first went to Lincoln?

Ans. 72. Went to the hotel to get some dinner.

Int. 73. Were the commissioners with you?

Ans. 73. They were.

Int. 74. All three of them?

Ans. 74. For a fact.

Int. 75. Staid with you all the time?

Ans. 75. They did.

Int. 76. You and the commissioners were together all the time, were you?

Ans. 76. We were.

Int. 77. You went from the hotel where you got your dinner directly to Mr. Touzalin's office, did you not?

Ans. 77. We did.

Int. 78. From there you sent for Mr. Sessions, did you?

Ans. 78. Now, I don't remember. I think they went out after him, or I think we sent some person for him; I don't remember which now.

Int. 79. You say that you read all the papers that were drawn up there in the office of Mr. Touzalin to the county commissioners at that time?

Ans. 79. Yes, sir; I did.

Int. 80. Did you take them into a room by themselves to read them?

Ans. 80. I did.

Int. 81. Read them over carefully, did you?

Ans. 81. I did; some of them twice.

Int. 82. Did Mr. Sessions read them?

Ans. 82. He did.

Int. 83. Did he read them to the commissioners?

Ans. 83. He did.

Int. 84. Was he in the room with you all the time?

Ans. 84. He was.

Int. 85. Who wrote those papers?

Ans. 85. They was dictated by Mr. Sessions and the county commissioners to one of the clerks of the office, I believe, or I did myself—wrote some of them—but one of the clerks assisted, and then they were copied by one of the clerks there in order to bring them in better shape. It was written off hurriedly.

529 Int. 86. One of what clerks?

Ans. 86. Down in the B. & M. office.

Int. 87. One of Mr. Touzalin's clerks?

Ans. 87. I don't know whether it was or not. I don't suppose Mr. Touzalin had any clerks. I suppose it was one of the clerks of the B. & M. Railroad Company.

Int. 88. How much money did Mr. Smith give you at that time to pay the expenses of the commissioners and your own?

Ans. 88. I don't remember. In the neighborhood of two hundred dollars to pay the commissioners', my own expenses, and to pay Mr. Sessions.

Int. 89. Did you pay Mr. Sessions the money?

Ans. 89. I passed him over the money.

Int. 90. When?

Ans. 90. The morning before we left.

Int. 91. How much did you pay him?

Ans. 91. I paid him one hundred dollars.

Int. 92. You handed the money to Mr. Sessions himself?

Ans. 92. I did.

Int. 93. When were you appointed agent for the sale of the B. & M. railroad lands in Boone county?

Ans. 93. Some time in the summer or fall of 1878.

Int. 94. Who was agent for the sale of those lands in the county before you were appointed?

Ans. 94. Mr. Clark acted as agent for them, but he didn't sell but very few pieces of their lands—don't suppose he sold to exceed four or five.

Int. 95. Now you say that the county had prior to this instituted a suit in the United States court for the collection of these taxes. Are you sure of that?

Ans. 95. Yes.

Int. 96. Are you as sure that the county commissioners or the county of Boone had brought suit against the railroad company for the collection of these taxes in the United States court as you are of anything you have sworn to here to-day?

Ans. 96. Well, now, I am sure of this, that the county commissioners had employed Mr. Millet and Son, of Columbus, and Messrs. Briggs & Ambrose, of Omaha, to prosecute the taxes of Boone county along with others—counties that they had at that time——

For continuation of this (John Peters') testimony see pages 233, 234, 235, and a part of 236, to point marked ☞.

233 —was acting for—to prosecute these tax cases, and they have paid Briggs & Ambrose and also Messrs. Millet & Son for their services; and that is just as true as anything else I have testified to.

Int. 97. At the time that you went to Lincoln with the commissioners and employed Mr. Sessions, Mr. Smith had completed his part of the contract, had he?

Ans. 97. Not entirely. I think I said, though, that he had completed the work, but it was about completed. This was in January. It was cold weather then, and of course he could not work to great advantage, and he stopped part of the work until the next spring, at the time of this settlement, though at the time we went down Mr. Smith gave a guarantee bond of ten thousand dollars to complete the work as set forth in the original contract.

Int. 98. Was there any contract or agreement between the commissioners and Adam Smith or the B. & M. Railroad Company other than the contract set forth in the exhibits referred to in your testimony?

Ans. 98. I don't remember of any other contracts—that is, any other written contracts. There might have been some understanding between the county commissioners and Adam Smith, but those are the only written agreements that I remember of.

Int. 99. Was there any other consideration, to your knowledge, for the signing of that stipulation, referred to in your testimony as

"Exhibit B," than the contract with Adam Smith, referred to as "Exhibit A," and the bond of the railroad company and Adam Smith for the payment of their taxes of 1878 and thereafter, and referred to as "Exhibits C and D" in complainant's evidence?

Ans. 99. I don't remember of any other written contract only as referred to, with this exception, that Adam Smith was to bring a lot of settlers and to expend a considerable amount of money in the county. Adam Smith gave this bond that I spoke of a few minutes ago for the faithful completion of this road and bridges,
234 and he was to guarantee to sell these lands to actual settlers.

Int. 100. Now, Mr. Peters, did you, for the county commissioners, or any one else for them, ever examine carefully the taxes or the assessments from the years 1873 to 1877, inclusive, on all the lands of the B. & M. Railroad Company in Boone county with a view to ascertain whether or not the law had been strictly complied with in all respects relative to the levy and assessments of all the taxes for those years?

Ans. 100. The tax lists for these various years had been examined by the county commissioners at different times with the view of collecting some of these taxes. They have had a statement or they have had abstracts of the assessments made and also abstracts of the levies that were made, and had submitted them to attorneys at different times, and at the meeting of the board of equalization—not of equalization, but at the time of furnishing the assessors of the county with blanks—they had frequently made the statement that the lands were assessed too high and thought it would be to the best interest of the county if the assessors would reduce the assessment on these lands, as it gave good reasons for the non-payment of the taxes by the railroad company. Those remarks had been made frequently by the commissioners, and, in fact, it had been talked over during those years at different times in regard to the legality of these taxes, and while perhaps at different times they didn't think that the taxes were all illegal, but still there were chances on account of the assessments and the levies made by the different school districts being so high, it was questionable in the minds of the commissioners whether these taxes could be collected.

Int. 101. Then, as a matter of fact, the assessors returned their own valuation of these lands, did they not?

Ans. 101. No, sir; not in all cases. As a matter of fact, the county commissioners told the assessors what to put on the lands at different times.

235 Int. 102. Did they return them at the rate that the county commissioners told them to?

Ans. 102. They generally did.

Int. 103. And at the same time the county commissioners claimed that that was too high?

Ans. 103. Yes; they began to see towards the latter years; when they found out what the assessments were in the other counties, they thought they were a little high up here in the neck of the woods.

Int. 104. Then Mr. Smith came to you first, did he, concerning this matter, and talked with you concerning the practicability or feasibility of this kind of a scheme to get rid of the taxes on these lands; is that correct?

Ans. 104. Now I will state, as I said before, that when Mr. Smith first came to Boone county he called at the court-house. The county commissioners did not live in Albion at that time, none of them—lived out in the country. Mr. Smith then stated that he was here for the purpose of looking over the county with a view of purchasing lands. Well, I was in the real-estate business and thought I had got a good customer, so I commenced to tell him of a few homesteads I had for sale. He listened to what I had to say, and said that while he didn't expect to buy land at this time he would probably come up again; he was here now for the purpose of looking over the country, but that he would look over the county and probably come back again. A short time, or some time after that he came back, and at that time he inquired of the county commissioners, and then spoke to me about this plan of his buying this land; wanted to know about how the people of this county would entertain a proposition of that kind. While he did not divulge to me all of his plans, he said that he would buy a large tract of land if he could so arrange it with the county commissioners to do away with these back taxes, and if that could not be done he would have to go
236 to some other locality, stating that he had been in the land business heretofore in Illinois—bought a large tract of land from the Illinois Central Railroad Company, improved it and settled it, as he proposed to do in Boone county; and after hearing his views, all that heard him fell at once in with his plan as being the best interests for Boone county.

Int. 105. Did he say anything to you at that time about being connected in any deal with the B. & M. Railroad Company—about any town site or land deal?

Ans. 105. No, sir; I did not know that he had any connection whatever with the railroad company.

Int. 106. Did he say anything to you at that time about his having had any conversation with the officers of the B. & M. Railroad Company relative to buying this land on the conditions and terms that he mentioned?

Ans. 106. No, sir; he didn't say that he had any conversation with the railroad company—any connection whatever—but he did say this: that he would first go to the county commissioners of Boone county—he first would go here to the people—and if he could make this arrangement with the people of Boone county, through the county commissioners, he would then take this proposition to the railroad company and see what he could do with them. That is what he said.

530 Thereupon, afterwards, to wit, on the 10th day of November, 1884, depositions were filed in said case; which said depositions are in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

THE COUNTY OF BOONE
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA and H. H. HUNNEWELL. } 30, H.

Complainant's Rebutting Evidence (Continued).

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EXHIBIT A.

Oath of Assessor.

THE STATE OF NEBRASKA, *Boone County,* } *ss:*

I, T. H. Bowman, precinct assessor in and for Boone precinct, in Boone county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true
531 amount and value, and that, as I verily believe, the full value thereof is set forth in the above return, and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

T. H. BOWMAN, *Assessor.*

Subscribed in my presence and sworn to before me this 7th day of April, A. D. 1877.

[SEAL.]

JOHN PETERS,
County Clerk.

THE STATE OF NEBRASKA, } ss:
Boone County, }

I hereby certify the foregoing to be a true and correct copy of the oath of T. H. Bowman, assessor for Boone precinct, in Boone county, Nebraska, for the year 1877, which oath was taken, subscribed, and returned with the assessment-roll of said precinct for said year, and is now on file in the office of the county clerk of said county.

Witness my hand and the seal of said county this 7th day of November, A. D. 1884.

[SEAL.]

JOHN PETERS,
County Clerk,
By WM. WEITZEL, *Dep.*

Filed Nov. 10, 1884.

ELMER D. FRANK, *Clerk.*

THE STATE OF NEBRASKA, } ss:
Boone County, }

I, Hubert Reid, precinct assessor in and for Dublin precinct, in Boone county, Nebraska, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by oath of the person required to list the same,
532 is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns, and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

HURBERT REID, *Assessor.*

Subscribed in my presence and sworn to before me this 8th day of April, A. D. 1876.

[SEAL.]

JOHN PETERS,
County Clerk.

THE STATE OF NEBRASKA, } ss:
Boone County, }

I hereby certify the foregoing to be a true and correct copy of the oath of Hurbert Reid, assessor for Dublin precinct, Boone county, Nebraska, for the year 1876, which oath was taken, subscribed, and returned with the assessment-roll of said precinct for said year, and now on file in the office of the county clerk of said county.

Witness my hand and the seal of said county this 7th day of November, A. D. 1884.

[SEAL.] JNO. PETERS,
County Clerk,
By WM. WEITZEL, *Dep.*

Filed Nov. 10, 1884.

ELMER D. FRANK, *Clerk.*

533 In the Circuit Court of the United States for the District of Nebraska.

THE COUNTY OF BOONE, Complainant,
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA and H. H. HUNNEWELL, Respondents. } 30, H.

In accordance with the order of the court, a certified copy of which has been filed with complainant's evidence heretofore filed in this cause, and by agreement and consent of the attorneys of the above-named parties, complainant and respondents, I, C. P. Drennen, special examiner in chancery of the above-named court, on the 7th day of November, 1884, commencing at the hour of 1 o'clock in the afternoon, at the office of Miller & Price, att'ys, in the town of Albion, county of Boone, and State of Nebraska, took the rebutting testimony on the part and behalf of the complainant in said cause, which testimony I have reduced to writing in the depositions following, each of the several witnesses, to wit, John Peters, James H. Robinson, & Peter J. Files, before testifying, being by me duly sworn to testify the truth, the whole truth, and nothing but the truth touching such matters in the cause as were of them inquired, the counsel for the parties, to wit, J. S. Miller, Esq., for the complainant, and C. L. Trevitt, Esq., for the respondents, appearing and examining the witnesses, and said counsel agree and consent that the signatures to the said testimony shall be waived.

534 And the said JOHN PETERS, being about the age of 40 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said John Peters, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MILLER:

Int. 1. Mr. Peters, you may state what position you hold, if any.

Ans. 1. I am county clerk of Boone county.

Int. 2. Were you county clerk of Boone county during the years 1873, 1874, 1875, 1876, and 1877, or what years?

Ans. 2. I have been county clerk since the fall of 1873. I have been county clerk from 1874 up to the present time, including the year 1874.

Int. 3. Mr. Peters, as county clerk of the county, do you have

charge of the records of the county and the tax-rolls as returned by the assessors of the precincts in the county and retain them in your office, do you not?

Ans. 3. Yes, sir.

Int. 4. Now, Mr. Peters, what are these papers? (Here witness was handed a package of papers.)

Ans. 4. These are the oaths of assessors.

Int. 5. For what year?

Ans. 5. Well, this would appear to be for the year 1877.

Int. 6. Is there in that package an oath of each assessor for Boone county in the year 1877?

Objected to as irrelevant and not rebuttal.

Ans. 6. Well, I couldn't answer that until I would know how many assessors we had at that time. I don't remember now from memory without going back at that time to see how many precincts we had.

535 Objected to as incompetent.

Int. 7. What are those papers and when was that oath taken?

Objected to as irrelevant, incompetent, and not rebuttal.

Ans. 7. From the looks of those papers the oath was taken on the second day of April, 1877.

Int. 8. That was the oath of whom?

All this objected to as not rebuttal, incompetent, and irrelevant.

Ans. 8. That is the oath of F. P. Moore, of Plum Creek precinct.

Int. 9. Was he the assessor for that precinct?

Ans. 9. I presume he was, as he subscribed the oaths, and it was sworn to before me as county clerk the 2nd day of April, 1877.

Int. 10. What is the next one, Mr. Peters?

Ans. 10. The next one is the oath of the assessor of Oakland precinct, sworn to by J. Widaman April 2nd, 1877.

Int. 11. What is the next?

Ans. 11. The next one is the oath of Beaver precinct, H. W. Lapping, assessor, sworn to April 2nd, 1877.

Int. 12. What is the next?

Ans. 12. J. L. Blood, assessor for Cedar precinct, sworn to April, 2d, 1877.

Int. 13. What is the next one?

Ans. 13. The next one is sworn to by Hubert Reid, assessor for Douglas precinct, sworn to April 7th, 1877.

Int. 14. ——?

— —. The next one is by the assessor for Boone precinct, sworn to by T. H. Bowman April 7th, 1877.

Int. 15. What is the next?

Ans. 15. The next is by Wm. Weitzel, assessor for Ashland precinct, April 6th, 1877.

Int. 16. What is the next?

536 Ans. 16. The next is by M. B. Boardman, assessor from Manchester precinct, sworn to April 7th, 1877. The next

one is by H. Funrue, assessor for Shell Creek precinct, sworn to April 9th, 1877.

Int. 17. Now, Mr. Peters, those oaths were taken and subscribed on the day they are dated by the parties and were made to accompany their returns as assessors for that year; is it not the fact?

Objected to as incompetent, not rebuttal, and leading.

Ans. 17. I presume they were; that is my recollection; I don't remember now, but, then, it would naturally appear so.

Int. 18. They are retained by you in your office as such, are they not?

Ans. 18. I presume so.

Int. 19. Now, take that other paper. What are those papers that you have there?

Ans. 19. This seems to be the assessment of different precincts for the year 1876—assessment of real estate of Boone county.

Int. 20. Are there any oaths of the assessors attached to those?

Ans. 20. There appear to be.

Int. 21. Whose are the oaths attached there?

Objected to as not rebuttal, incompetent, and irrelevant.

Ans. 21. They appear to be the different assessors of the county at that time.

Int. 22. Give their names and when they were taken—just the first, second, and third—and give the names and dates as they appear.

Ans. 22. Charles Chadwick, Cedar precinct, sworn to April 11th, 1870.

Int. 23. Assessor, was he not?

Ans. 23. Assessor; yes.

Int. 24. What is the next one?

537 Ans. 24. The next one is the assessment of Douglas precinct, sworn to by Hubert Reid April 8th, 1876.

Int. 25. He was assessor, was he?

Ans. 25. Yes; says so.

Int. 26. What is the next one?

Ans. 26. The next one is assessment of Shell Creek precinct, sworn to by H. Funrue, assessor, April 5th, 1876. The next one is sworn to by Wm. Weitzel, assessor of Ashland precinct, sworn to April 8th, 1876. The next one is an assessment of Oakland precinct, sworn to by J. Widaman, assessor, April 8th, 1876. The next one is the assessment of Manchester precinct, sworn to by N. C. Kilborn, assessor, April 8th, 1876.

Int. 27. Are those part of the records retained in your office?

Ans. 27. I presume.

Int. 28. They are?

Objected to as not rebuttal, incompetent, and irrelevant.

Ans. 28. They are.

Int. 29. As county clerk do you have charge of the road record of Boone county?

Ans. 29. Yes.

Int. 30. Just take that book. (A book was here handed to witness.) What is that?

Ans. 30. That is the road record of Boone county.

Int. 31. Will you turn to the record made of the location of road No. 1, in Boone county?

Ans. 31. Yes, sir.

Int. 32. When was that shown by the record to have been located, and on what authority?

All this objected to as not rebuttal.

Ans. 32. According to this record, the petition seems to be dated February 7th, 1872. That was the date of the petition, and
538 there it seems to have been reported on the 11th day of April, 1873. That is a mistake, but that is what it seems to say.

Objected to as incompetent.

Int. 33. Does that record show when that road was located?

Ans. 33. Well, I presume it does. I don't know as it does, either.

Int. 34. As a matter of fact, have you any knowledge of whether that road was ever located by the county commissioners?

Objected to as incompetent and not rebuttal.

Ans. 34. I don't know anything about the road at all; it was some time before I had anything to do with this record, and it had never been entered up by me as successor.

Int. 35. Now, Mr. Peters, do you know anything about the graded wagon road that is testified to in the testimony of respondents as having been built by Adam Smith or the Nebraska Land and Live Stock Company in 1878?

Objected to as irrelevant, incompetent, and not rebuttal.

Ans. 35. I do.

Int. 36. Do you know where that road is?

Ans. 36. I don't know as I do now. I don't know how I would answer that question.

Int. 37. Do you know where it is located—where it runs?

Ans. 37. Yes.

Int. 38. Is that road referred to as having been built by Adam Smith upon the line of this road No. 1, as located by the record before you?

Objected to as incompetent and not rebuttal.

Ans. 38. No, sir; the graded road may be partly on this line or part of it may be on the graded road.

Int. 39. About how much of it was worked and located on this road No. 1?

539 Objected to as incompetent and not rebuttal

Ans. 39. When Adam Smith started his graded wagon road he commenced at Albion, running in a southeasterly direction down the Beaver valley, making an air-line road as near as practicable.

In locating the road or grading the road it become necessary to make a great many changes on the original road No. 1, as shown in this record. Wherever it was advisable to change from this road it was done. He had the county surveyor, M. Patterson, to survey the road, and in so doing it made a great many changes in the original road as located. In running the graded road—establishing the graded road—it became necessary to make these changes that I have spoken of in order to straighten it and make it an air-line road, and I should judge that the original road No. 1 would not at the present time represent the graded wagon road.

Int. 40. Now, Mr. Peters, do you know whether or not the precinct assessors for the county in the year 1875 took and subscribed an oath with their return of the assessment-rolls for that year?

Objected to as incompetent, irrelevant, and not rebuttal.

Ans. 40. Yes, sir; they did.

Int. 41. Was the oath for that year the same in substance as those which you have already testified to as being in your office for 1876 and 1877?

Objected to as incompetent, irrelevant, and not rebuttal.

Ans. 41. I can't say that they were the same as these, but I will state this: that the oaths that they subscribed was provided for in the statute. They subscribed to the statutory form as provided at that time. I swore them myself, and I know that they cor-
540 responded with that. In the early days of Boone county the assessments were made on sheets of paper. The oaths were also subscribed on sheets of paper. The county had no books at that time; and the records or returns of assessors have been moved about from place to place in the court-house, and I can't tell much about them at this time. Some of them may be lost and some of them may be destroyed. We had no place to keep them at this time. They had to be nailed up in a box. We had no place to keep them, and they were accessible to any party.

Int. 42. I will ask you if you have made any search among the papers of your office for the oaths of the assessors to their returns for 1875?

Ans. 42. Not of late I haven't. I may have done so several years ago; and I don't remember whether they were found or not, but think they were. My recollection is that Mr. Clark at one time took a copy of all this business down there, and I think that at that time we found everything that they wanted.

Cross-examination by Mr. TREVITT:

Int. 1. Do you know, as a matter of fact, of your own knowledge whether the oaths for 1875, 1874, and 1873 were filed or not?

Ans. 1. I presume they were.

Int. 2. I ask if you know it.

Ans. 2. Well, I would say yes, they were filed, because I know they were taken. They were all rolled up. Sometimes we found them in a corner of a box.

Int. 3. You were not custodian of those papers in 1873?

Ans. 3. No, sir.

Int. 4. Then you wouldn't know whether 1873 was filed?

Ans. 4. No; as far as 1873 is concerned, I was going ahead of my time.

Int. 5. Do you remember as to 1874, whether or not they
541 were filed, of your own knowledge?

Ans. 5. I can't go back and say positively, but I would take it for granted that they were. If I swore the assessors, which I undoubtedly did for those times, I certainly filed the oath with those papers.

Int. 6. And 1875, you would make the same answer?

Ans. 6. The same answer; of course I can't say positively now.

Int. 7. You say you swore the assessors; do you remember of swearing the assessors for the years 1875 and 1874?

Ans. 7. I will answer that positively yes. I know that I swore them.

Int. 8. Could you tell each individual assessor that you swore for those years?

Ans. 8. Not without referring back to the records who were assessors at that time.

Int. 9. Then your only information or remembrance of swearing them would be from the records?

Ans. 9. Yes.

Int. 10. Now, referring again to road No. 1, please look at it again; please give the date of the record.

(Witness here refers to a book.)

Ans. 10. This record shows the petition was dated February 17th, 1872.

Int. 11. Is that record in your handwriting?

Ans. 11. No, sir.

Int. 12. You were not county clerk until the year 1874, as I understand?

Ans. 12. No; I was county clerk in 1874—that is, I think I was first elected in the fall of 1873 and took the position of county clerk some time in November. The election was held in October at that time. That is my recollection.

542 Int. 13. That record was made before you were county clerk, at any rate?

Ans. 13. Yes, sir.

Int. 14. I understand that you have been swearing from the record itself in your examination-in-chief, do I?

Ans. 14. Well, I presume I have, as far as this road is concerned.

(Witness excused.)

Mr. MILLER: We offer here in evidence a certified copy of the oaths of T. H. Bowman, assessor for Boone precinct, in Boone county, Nebraska, in the year 1877.

Said certified copy is put in evidence and is hereto attached, marked "Exhibit A," and made a part of this testimony.

Mr. TREVITT: I object to that as irrelevant and not rebuttal and as incompetent.

Mr. MILLER: We now offer in evidence a certified copy of the oath of Hubert Reid, assessor for Dublin precinct in the year 1876.

Said certified copy is put in evidence and is hereto attached, marked Exhibit "B," and made a part of this testimony.

Objected to as not rebuttal, irrelevant, & incompetent.

Attorneys for respondents agree to waive the introduction of certified copies of the oaths of the other assessors named above, viz., F. P. Moore, J. Widaman, H. W. Lapping, J. L. Blood, Hubert Reid, Manly B. Boardman, Wm. Weitzel, H. Funrue, in the year 1877, and Charles Chadwick, H. Funrue, Wm. Weitzel, J. Widaman, N. C. Kilborn, H. W. Lapping, for the year 1876, subject to the same objections as Exhibits "A" and "B," and these certified copies are to be considered the same as offered. This is done to save encumbering the record.

543 And also the said JAMES H. ROBINSON, being about the age of 54 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said James H. Robinson, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MILLER:

Int. 1. What is your name?

Ans. 1. James H. Robinson.

Int. —. What is your age?

Ans. 2. I am pretty near 54 years old.

Int. 3. Where do you reside?

Ans. 3. At Cedar Rapids, Boone county, Neb.

Int. 4. How long have you resided in Boone county, Nebraska?

Ans. 4. I have resided in Boone county—I think it is twelve years this fall.

Int. 5. Did you hold any position or office in Boone county in the year 1874?

Ans. 5. Yes, sir.

Int. 6. What was it?

Ans. 6. I was assessor that year.

Int. 7. For what precinct?

Ans. 7. Cedar precinct.

Int. 8. Now, Mr. Robinson, you may state, if you know, whether or not when you made your return of the assessment-roll for Cedar precinct for 1874.

All this evidence objected to as irrelevant and not rebuttal.

Ans. 8. I made it just at the time the law provides for assessors to make returns. I was careful about that. I don't remember just when it was, but I remember of giving it at that date because the law required me to give it at that time.

Answer objected to as incompetent and not the best evidence.

544 Int. 9. Now state, Mr. Robinson, if you know, whether or not you took and subscribed an oath when you made the return of your assessment-roll to the county clerk.

Objected to as incompetent and not the best evidence.

Ans. 9. I know I did.

Int. 10. State, if you can, the substance of that oath and the reason you remember it.

Objected to as incompetent and not the best evidence.

Ans. 10. I remember it because when I commenced assessing the commissioners gave me some instructions with reference to assessing personal property, and when I took the oath, I took the oath that I had assessed the property according to law and the best of my ability. I wondered why it was that I was instructed by the commissioners when I had to go by law and my own judgment. That is why I remember the circumstances.

Int. 11. Who did you take that oath before?

Ans. 11. John Peters, county clerk.

(Witness excused.)

And also the said PETER J. FILES, being about the age of 50 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Peter J. Files, and he did thereupon depose, testify, and say as follows, viz:

By Mr. MILLER:

Int. 1. State your name, age, and place of residence.

Ans. 1. Peter J. Files; 50 years of age; live in Cedar precinct, Boone county, Neb.

Int. 2. How long have you resided in Boone county, Nebraska?

Ans. 2. Since 1873.

545 Int. 3. Do you know anything about the location and route of a graded wagon road which has been testified to in the testimony of the respondents as having been built by Adam Smith from Albion to the Union Pacific railroad in 1878?

Objected to as incompetent, irrelevant, not rebuttal, and not the best evidence.

Ans. 3. I know that a road was built here in 1878—I believe it was the year 1878—from Albion. I know where the road runs. I have traveled over the road, all of it, I think. My judgment is that it is principally on the route of road No. 1. There is some points on the road that I know was marked out before that road was built and traveled—I mean in this county. Those parts of the road that I know where it runs was marked out and traveled as road No. 1. I wasn't there when the road was surveyed and don't know just where it was.

Int. 4. Do you know of your own knowledge whether or not the

graded road referred to in the testimony of the respondents was graded and worked on what was known and traveled as road number one in Boone county?

Objected to as irrelevant and incompetent.

Ans. 4. It was.

Int. 5. Was you here when this graded road was built by Adam Smith?

Ans. 5. I was.

Int. 6. Have you traveled over that road immediately after it was built and since then?

Ans. 6. A short time afterwards I traveled over it.

Int. 7. Are you familiar with the amount of work expended in building that road?

Objected to as irrelevant and incompetent and immaterial.

Ans. 7. I know about what was done on the road.

546 Int. 8. Do you know the number of bridges built on that road in Boone county?

Objected to as irrelevant and incompetent and immaterial.

Ans. 8. My recollection is that there was four bridges built in Boone county—small bridges.

Int. 9. On the line of that road?

Objected to as irrelevant and incompetent and immaterial.

Ans. 9. Yes, sir; three of them were truss bridges and the other wasn't. That is my recollection.

Int. 10. Are you familiar with the cost of bridges of that nature or was you of what the cost was at that time, of bridges of that nature?

Objected to as immaterial, irrelevant, and incompetent.

Ans. 10. Well, I can't say that I was familiar with the costs of bridges at that time. Since that time I have had more experience in bridges than I had before.

Int. 11. From your judgment and knowledge of the cost of bridges, what would be the reasonable cost of those bridges?

Objected to as irrelevant and incompetent, the witness saying that he was not familiar with the cost of bridges at that time.

Ans. 11. At the present time the cost of three of them bridges wouldn't be to exceed one hundred and fifty dollars each. The cost of the other bridge wouldn't be more than half that. That bridge, I wouldn't be positive, but I think it was put in at the same time. It is a different kind of a bridge and much smaller.

Int. 12. Now, Mr. Files, do you know where the bridge referred to across the Loup river, referred — in Exhibit G of the testimony filed by respondents—do you know where that bridge is located, whether in Boone county, or where?

Objected to as irrelevant, not rebuttal, and incompetent.

547 Ans. 12. That bridge was built across the Loup river, in what was then the Pawnee reservation, I believe, now Nance county.

Int. 13. Then it wasn't in Boone county at the time this road was built nor at the time when the same was accepted, as referred to in said Exhibit "G?"

Objected to as irrelevant, not rebuttal, and incompetent.

Ans. 13. It was not.

Int. 14. Do you know how far outside of the county or beyond the limits of the county this bridge was located?

Objected to as irrelevant, not rebuttal, and incompetent.

Ans. 14. Some eight or ten miles, I think—but don't know exactly—from the county line.

Int. 15. Do you know the number of miles the wagon road referred to in this testimony was located within the limits of Boone county?

Objected to as irrelevant, not rebuttal, and incompetent.

Ans. 15. It seems to me that I have answered that question.

Int. 16. How many miles of that road is in Boone county?

Objected to as irrelevant, not rebuttal, and incompetent.

Ans. 16. Somewhere about 14 miles, in my judgment.

Int. 17. Have you made any effort to ascertain the exact number of miles?

Objected to as irrelevant, not rebuttal, and incompetent.

Ans. 17. I examined the surveyor's field-notes for this road No. 1 and find that according to them that it is a little less than fourteen miles that road was.

Int. 18. Well, could the graded road referred to be any longer?

Ans. 18. If there is any difference in the roads, the graded road and road number one, according to that plat the graded road would be shorter than road No. 1.

548 Question and answer objected to as incompetent and not the best evidence, the witness testifying from record evidence.

Int. 19. Now, Mr. Files, have you ever had any experience in Boone county in building roads and are you familiar with the costs of such work?

Ans. 19. I haven't had a great deal of experience in building roads of that character.

Int. 20. Do you hold any office in Boone county?

Ans. 20. I do.

Int. 21. What is it?

Ans. 21. The office of county commissioner.

Int. 22. Then you must have had some experience as to what is the cost of that class of work in this county, haven't you?

Objected to as irrelevant, incompetent, and leading, the witness already having answered that he hasn't had much experience.

Ans. 22. We haven't graded any roads.

Int. 23. In your judgment, Mr. Files, what would be the reasonable costs and value of the road referred to in Boone county?

Objected to as irrelevant, not rebuttal, incompetent; witness hasn't shown himself qualified to answer.

Ans. 23. I know about what was done on it. My judgment would be that it was worth from one hundred to one hundred and fifty dollars a mile to do that grading. My judgment is that it could be done for one hundred and fifty dollars a mile, with a plow and scraper.

Int. 24. Now, Mr. Files, you may state whether or not you was present at any public meeting in Boone county, held in the spring of 1878, relative to the settlement of the taxes referred to in the decree sought to be set aside in this action.

Ans. 24. I was present at two public meetings.

Int. 25. When was the first one?

Ans. 25. I don't remember the date.

549 Int. 26. Can you give the month?

Ans. 26. I could not give the month.

Int. 27. What action was had at that meeting?

Ans. 27. That was the meeting held at the school-house in district number one here, and I don't know as I could state the exact words of the resolution, but, at any rate, it was a meeting there for the purpose of authorizing some person to resist the suit that was brought in court to give away or do away, as you please to call it, the taxes of the B. & M. Railroad Company in this county.

Int. 28. Were you present and did you hear the testimony of John Peters filed by the respondents in this case?

Ans. 28. I only heard a part of it.

Int. 29. Did you hear that part of his testimony concerning the meeting referred to?

Objected to as irrelevant, incompetent, and not rebuttal.

Ans. 29. I think I did.

Int. 30. Now, state, Mr. Files, if you know, what was the result of that meeting—whether or not the people generally endorsed the action of the commissioners in their pretended settlement with Adam Smith of the taxes for the years referred to in the decree sought to be set aside in this action?

Objected to as incompetent, irrelevant, and not rebutting testimony.

Ans. 30. I have reference to the first meeting that was held here now, and the sentiment of the people here at that time was almost unanimous in opposition to the action of the commissioners. John Peters was the only man that attempted there to defend the action of the commissioners, that I recollect.

Int. 31. Who was John Peters?

Ans. 31. County clerk of Boone county.

Int. 32. Was that meeting well attended—many people there?

550 Objected to as incompetent, irrelevant, and not rebutting testimony.

Ans. 32. Yes; there was a number of people there; the schoolhouse was crowded pretty full.

Int. 33. You say you were at two meetings?

Objected to as incompetent, irrelevant, and not rebuttal.

Ans. 33. Where was the second meeting held?

Objected to as incompetent, irrelevant, and not rebuttal.

Ans. 34. It was held in front of the court-house.

Int. 25. Can't you remember the time?

Ans. 25. That was the second meeting, but I don't remember the month it was in.

Int. 36. Was that the meeting referred to in the testimony of A. E. Touzalin filed in this cause?

Objected to as irrelevant and incompetent.

Ans. 36. According to my understanding, it was the same meeting.

Int. 37. Was Mr. Touzalin present?

Objected to as irrelevant and incompetent.

Ans. 37. Yes.

Int. 38. Did Mr. Touzalin address the meeting?

Objected to as irrelevant and incompetent.

Ans. 38. He did.

Int. 39. Do you remember anything that Mr. Touzalin said at that meeting, in part?

Objected to as irrelevant, incompetent, and hearsay.

Ans. 39. I remember some things that he said. Mr. Touzalin stated at that meeting that there was a suit pending in the United States court in regard to the title to their lands, and that it would be impossible for us to collect any of the taxes, and that our
551 tax was dead, he said. As dead as a herring was the language he used.

Int. 39. What was the result of that meeting?

Objected to as irrelevant, not rebuttal, incompetent, and calling for an opinion.

Ans. 39. The result of that meeting was—well, there was a vote taken, as I recollect it, whether or not to sustain the action of the commissioners, and there was quite a number of people there that voted in favor of sustaining the action of the commissioners, but there was a large number of the people that did not vote on it at all. As far as I was concerned, I never believed in it.

Move to strike out the last part of the answer above as not responsive.

Cross-examination by Mr. TREVITT:

Int. 1. You say you attended but two meetings?

Ans. 1. That is, of public meetings.

Int. 2. How many meetings were there altogether?

Ans.2 . I have no knowledge of any but the two being held.

Int. 3. There might have been more?

Ans. 3. There might have been, but I don't think there was, without me knowing it. I was here in the county all the time. I mean public meetings.

Int. 4. You say that this was the same meeting that Mr. Touzalin referred to in his testimony?

Ans. 4. As I understand it.

Int. 5. What date was the meeting that Mr. Touzalin referred to in his testimony?

Ans. 5. I don't remember the date.

Int. 6. How do you know it is the same meeting, then?

Ans. 6. From some of the circumstances in his evidence.

Int. 7. Would you swear positively that it is the same meet-
552 ing to which Mr. Touzalin refers in his evidence from your own knowledge?

Ans. 7. I could not swear positively that he means that only from my own. I read his testimony, and from what he says in his testimony is what I came to my conclusion from as to its being the same meeting.

Int. 8. You will not swear positively that there were not other meetings?

Ans. 8. Not positively. I could not swear positively that there were no other meetings.

Int. 9. When was this road built that you have been testifying about?

Ans. 9. The graded road?

Int. 10. Yes; the graded road.

Ans. 10. In 1876, is my recollection of it.

Int. 11. What was your business in 1878 and prior thereto?

Ans. 11. A farmer.

Int. 12. Have you ever been engaged in building or working roads?

Ans. 12. I have worked roads as road supervisor in Illinois.

Int. 13. How often have you travelled this graded road?

Ans. 13. I don't know. I have travelled it a number of times.

Int. 14. About how many—I mean at the time they were grading it?

Ans. 14. At the time they were grading it I was on the road several times, but to travel the road all the way through, I don't think I travelled it all the way through during the time that they were grading it.

Int. 15. On what basis do you form your answer as to the amount of work done on that road?

Ans. 15. I form my opinion from how much it is to plow a

ditch and pull that dirt up into the midde of the road with a scraper.

553 Int. 16. How long do you say that road was altogether—the whole length of the graded road?

Objected to as not proper cross-examination, not being confined to the length of the road in Boone county.

Ans. 16. I can't tell the exact length of the road, but, then, I can approximate.

Int. 17. Give your best judgment.

Ans. 17. It is about fourteen miles in this county, and then it is fifteen miles across Nance, but then it does not run direct there, and then it runs into Merrick county; I don't know how far it runs into Merrick county; it runs into Silver creek.

Int. 18. Is it not a fact this road was used by the people of Boone county throughout its entire length?

Objected to as not proper cross-examination, immaterial, and irrelevant.

Ans. 18. It was by the people of Boone county its entire length, but I don't think anywhere near exclusively used by the people of Boone county.

Int. 19. In relation to the bridges, have you ever been a bridge-builder?

Ans. 19. I shouldn't say that I was a bridge-builder; I have worked on bridges.

Int. 20. Have you ever been a contractor for building bridges?

Ans. 20. I couldn't say that I have, although I have contracted and built some bridges.

Int. 21. Where?

Ans. 21. In Illinois.

Int. 22. Have you ever contracted to build bridges here?

Ans. 22. No, sir; never contracted myself to build bridges here; nothing more than repair bridges.

Int. 23. As a matter of fact, you don't know anything about

554 the price of bridges?

Ans. 23. Well, I know something about the price of bridges.

Int. 24. At the time these bridges were built you didn't know anything about the costs of building bridges, did you?

Ans. 24. I believe I have stated that at the time these bridges were built I didn't know anything about the costs of building bridges.

Int. 25. Returning to the work on the road, can you tell how much per cubic yard it costs for excavation?

Objected to as immaterial, the testimony not showing that there has ever been any excavation on the road.

Ans. 25. As far as that is concerned, it costs different prices.

Int. 26. How much per cubic yard is a usual price for excavating

earth without any rock in it—just earth or sod, as along the line of the graded road?

Objected to as irrelevant, immaterial, and not proper cross-examination.

Ans. —. I never knew of a contract being let for excavating soil on the same principle that that is excavated.

Int. 27. Do you know the usual price for filling, under contract?

Ans. 27. For making fills?

Int. 28. For making fills.

Ans. 28. I can't say that I do. This is just simply plowed on the side of the road and thrown up to the center. That is the way this road is built right along. There is no fills in it. It wasn't scraped up; it was built by a grading machine.

Int. 29. Have you examined carefully this graded road for the purpose of placing an estimate of its worth?

Ans. 29. I have not for that purpose.

Int. 30. Have you examined the entire length of this road in the county of Boone?

555 Ans. 30. I have been over the entire length of the road in the county of Boone.

Int. 31. You were not there when they were working it, all the time?

Ans. 31. I was not.

Int. 32. Don't know how many hands they had on?

Ans. 32. I don't know how many hands they had on.

Int. 33. Don't know how long they were building it?

Ans. 33. I don't.

Int. 34. And don't know the amount of work put on it?

Ans. 34. I have seen the amount of work put on it.

Int. 35. When?

Ans. 35. At different times.

Int. 36. After it was built?

Ans. 36. After it was built.

Int. 37. Don't know the amount of work that was put on this road?

Ans. 37. I don't.

Int. 38. Don't know the amount of money that was expended on this road?

Ans. 38. I do not.

Redirect examination by Mr. MILLER:

Int. 1. You are familiar, are you, with the manner in which this road was graded, the depth of the ditch on either side, and the height of the grade?

Ans. 1. I have seen how deep it was and how much it was graded up.

Int. 3. How deep was the ditch?

Ans. 2. I have never measured it.

Int. 3. Your judgment?

Ans. 3. There was a ditch on either side of the road. It was graded with a grading machine, and the dirt on either side
556 was carried up to the center of the road and dumped off there with this grading machine, and the ditch, I don't think, was to exceed fifteen or sixteen inches deep. I don't believe it was; it might have been deeper.

Int. 4. Did they grade down any big hills?

Ans. 4. They did not. They just graded the same all along; they plowed out this ditch, and the machine carries the dirt over to the center of the road.

Int. 5. You say you was there when they were grading the road?

Ans. 5. I saw them grading the road, but wasn't there any length of time.

Int. 6. How many men did you see there?

Ans. 6. I don't remember the exact number of men. There was three or four men.

Int. 7. How many teams?

Ans. 7. I don't know just how many. There was two or three teams on the grader.

Recross-examination by Mr. TREVITT:

Int. 1. What you have testified to in redirect examination is from your own knowledge and being on the ground at the time, in regard to the men and the teams?

Ans. 1. I don't say positively just how may teams there was.

Int. 2. To the extent that you have testified is just what you saw there?

Ans. 2. Yes.

Int. 3. Do you remember the month when they commenced to build the road?

Ans. 3. I do not.

Int. 4. Can you state about how many times you were there while they were building the road?

557 Ans. 4. I wasn't there a great many times. I was there about three or four times.

Int. 5. They might have had more men and teams at a time when you wasn't there?

Ans. 5. They might.

Int. 6. You won't swear that they did not?

Ans. 6. No, sir; I won't.

(Witness excused.)

Complainant rests.

UNITED STATES OF AMERICA,
District of Nebraska, State of Nebraska, County of Douglas, } ss:

I, C. P. Drennen, a special examiner in chancery, duly appointed by the circuit court of the United States for said district to take the testimony in the cause in the caption of the said testimony named, in accordance with the order of the court and by consent and agreement of the attorneys for the respective parties, complainant and

respondents, do hereby certify that on the 7th day of November, 1884, at the hour of 1 o'clock in the afternoon, I was attended at the law office of Miller & Price, in the town of Albion, county of Boone, and State of Nebraska, by J. S. Miller, Esq., attorney for the said complainant, and C. L. Trevitt, Esq., attorney for the said respondents, and the witnesses, John Peters, James H. Robinson, and Peter J. Files, all of said witnesses being of sound mind and lawful age; and the said witnesses, before testifying, were by me sworn to testify the truth, the whole truth, and nothing but the truth touching such matters as were of them inquired in the cause, and the testimony of each was by me reduced *in* writing in the presence of the
558 witness and from his statements, and that the signing of said testimony by said witnesses was waived by agreement and consent of the attorneys for the parties, complainant and respondents.

I have retained the said testimony in my possession for the purpose of transcribing the same from my short-hand notes and of delivering the same, with this certificate, to the court.

And I further certify that Exhibit A and Exhibit B, offered in evidence by J. S. Miller, Esq., and hereto attached, were introduced in evidence during the taking of said testimony.

And I do further certify that I am not counsel nor attorney for either of the parties in said testimony and caption named, nor in any way interested in the event of the said cause named in said caption.

In testimony whereof I have hereunto set my hand this 10th day of November, A. D. 1884.

C. P. DRENNEN,
Special Examiner in Chancery.

Fee Bill.

C. P. Drennen, sp'l examiner	$30 30
John Peters, witness, 1 mi., 1 day	1 60
James H. Robinson, witness, 10 mi., 1 day	2 50
Peter J. Files, " 10 " 1 day	2 50

Upon the back of said depositions appear endorsements in words and figures following, to wit: No. 30, H. Delivered in person by Examiner Drennen, and filed Nov. 10, 1884. Elmer D. Frank, clerk.

559 Thereupon, afterwards, at the November term of said court, on the 15th day of November, 1884, the following proceedings were had and done in said cause, as appears of record on folio 579, Journal "I," of said court, to wit:

BOONE COUNTY *vs.* B. & M. R. R. Co. *et al.* } Cause Submitted. No. 30, H.

Now come the parties hereto, by their solicitors, and this cause is submitted to the court on printed briefs, and, on motion, complain-

ant is allowed thirty days in which to file its brief, and defendants thirty days thereafter to file briefs in answer, and complainant ten days thereafter to file brief in reply.

Thereupon, afterwards, at the May term of said court, on the 5th day of May, 1885, the following proceedings were had and done in said cause, as appears of record on folio 67, Journal "K," of said court, to wit:

Boone County
vs
B. & M. R. R. Co. *et al.* } Cause Submitted on Briefs. No. 30, H.

This cause, coming on to be heard on the regular call of the docket, was submitted to the court on briefs. Plaintiff is ruled to file brief in reply in thirty days from this date, and to file full record of judgment in the cause of Hunnewell *vs.* Boone County *et al.*

Thereupon, afterwards, to wit, on the 17th day of November, 1885, evidence on behalf of defendants was filed in said cause; which said evidence is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

560 Horatio H. Hunnewell and Others Similarly Situated
vs.
The Burlington and Missouri River Railroad Co. in Nebraska, The Board of Co. Commissioners of Boone County, and S. T. Bollman, Treas. of said County.

T. M. Marquett, for complainant; M. H. Sessions, for resp.

Date.		Proceedings.		
1878.				
March	4.	Bill, 10; stipulation, 10		20
"	"	Rec'd of pl'ff	$3	20
"	8.	Entering decree, 60; copy for def'ts' att'y	1	35
"	"	Leave to make showing in 30 days		15
April	5.	Cross-bill & exhibits and sending to Judge Dundy	1	30
"	"	Copy of order of March 8 for Judge Dundy & sending files by ex.	1	45
May	6.	Filed motion to strike cross-bill		10
"	4.	Ent'd order in order book *containing* cause for further hearing		25
"	10.	Ent'd order striking cross-bill of clerk on conditions		30
		Bar calenders		50
		Comp. record	29	40
		Docket fee	2	00
June	26.	Cert. copy decree, &c.	2	00
July	4.	Rec'd of B. & M. R. R. Co. in Neb., per A. E. Touzalin	35	80

WATSON B. SMITH, *Clerk.*

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the above
561 and foregoing is a true and correct copy of appearance docket entries in above-entitled cause and the whole thereof as they appear of record in said office.

Witness my hand and official seal this 13th day of April, A. D. 1885.

[SEAL.] ELMER D. FRANK, *Clerk.*

Upon the back of said evidence appear endorsements in words and figures following, to wit: No. 30, H. Boone Co. *vs.* B. & M. R. R. Co. Evidence on behalf of defendants. Filed Nov. 17, 1885. Elmer D. Frank, clerk.

Thereupon, afterwards, at the November term of said court, on the 24th day of November, 1885, the following proceedings were had and done in said cause, as appears of record on folio 470, Journal "K," of said court, to wit:

THE COUNTY OF BOONE
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD Company in Nebraska and Horatio H. Hunnewell. } Decree. 30, H.

This cause came on to be heard upon the bill, answer, pleas, and reply, and upon the evidence, both by documentary and depositions, and was argued by counsel and was duly submitted to the court; on consideration whereof the court finds in favor of the defendants, and do find that the equities are in favor of the defendants.

It is therefore ordered, adjudged, and decreed by the court that the complainant's bill stand dismissed out of this court for want of equity; and it is further ordered, adjudged, and decreed that the defendants have judgment against the complainant for costs, to be taxed at — dollars.

Complainant prayed an appeal, which was allowed.

(S'g'd) DAVID J. BREWER,
Circuit Judge.

This decree was based solely on the ground of laches on the part of complainant.

D. J. BREWER,
Circuit Judge.

562 UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court of the United States for the eighth circuit and district of Nebraska, certify that the foregoing folios, from one to 562, contain true and faithful transcripts of

the pleadings and proceedings of record and on file in my office as said clerk in the case of Boone County, plaintiff, *vs.* The Burlington & Missouri River Railroad Company in Nebraska and others, defendants.

Witness my hand and the seal of said circuit court, at Omaha, Nebraska, this 4th day of October, A. D. 1887.

[Seal United States Circuit Court, District of Nebraska.]

ELMER D. FRANK, *Clerk.*

Endorsed on cover: Nebraska C. C. U. S. No. 297. The County of Boone, appellant, *vs.* The Burlington & Missouri River Railroad Company in Nebraska and Horatio H. Hunnewell. Filed November 15, 1887.

Office Supreme Court U. S.
FILED,
MAR 30 1891
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 297.

THE COUNTY OF BOONE, *Appellant.*

vs.

THE BURLINGTON & MISSOURI RIVER RAILROAD CO. IN NEBRASKA, *et al., Appellees.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NEBRASKA.

BRIEF FOR APPELLANT.

J. C. COWIN,
Of Counsel for Appellant.

REES PRINTING CO., OMAHA

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 297.

THE COUNTY OF BOONE, *Appellant.*

vs.

THE BURLINGTON & MISSOURI RIVER RAILROAD CO. IN NEBRASKA, *et al.*, *Appellees.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NEBRASKA.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This is a suit in equity, brought by the County of Boone, State of Nebraska, against the Burlington & Missouri River Railroad Company in Nebraska, a Nebraska corporation, and Horatio H. Hunnewell, in the United States Circuit Court for Nebraska, seeking to vacate and set aside a decree entered in that Court on the 8th day of March, 1878, in a suit brought by Horatio H. Hunnewell against the County Commissioners of Boone County, its County Treasurer and the Burlington & Missouri River Railroad Company in Nebraska,

which decree perpetually enjoined the County of Boone from enforcing the collection of taxes amounting to the sum of about $70,000 that had been assessed by Boone County against the Burlington & Missouri River Railroad Company in Nebraska, upon its lands in the County of Boone, thus wiping out that entire list from the tax list.

The decree is sought to be set aside for the reasons that the Court had no jurisdiction of the cause; that the decree was procured by the defendant in that case, the Burlington & Missouri River Railroad Company in Nebraska, in collusion with the complainant in that case, Horatio H. Hunnewell, who was one of its stockholders, and was a fraud and imposition upon the Court; that the decree, being a consent decree, was fraudulently secured to be entered by the Burlington & Missouri River Railroad Company in Nebraska, in collusion with said Hunnewell, by imposition, fraud and misrepresentation of the last named parties, practiced upon the County of Boone; and, lastly, that it was incompetent for the County of Boone to consent to a decree enjoining and vacating said taxes, the same being a legal and equitable tax, justly chargeable for general revenue purposes against and upon the lands of the Burlington & Missouri River Railroad Company in Nebraska.

During the years from 1873 to 1877, inclusive, the defendant company, the Burlington and Missouri River Railroad Company in Nebraska, was the owner in fee of a large amount of land, in fact each alternate

section, in the County of Boone, in the State of Nebraska. During the years aforesaid the lands were subject to taxation under the laws of the State of Nebraska. With respect to the taxability of the lands there is no contention.

The lands were assessed for revenue purposes and taxes were levied thereon for State, county and school purposes, during said several years in amounts substantially as follows: In 1873, $15,663.00; 1874, $11,958.00; 1875, $10,417.00; 1876, $15,628.00; 1877, $15,000.00. During this time the defendant company had all of said lands in the market for sale and made more or less sales.

The defendant company refused to pay the taxes so assessed and levied or any part thereof, giving as a reason therefor that the assessment was too high; appeared before the commissioners each year as a board of equalization and made complaint of the assessment being too high, which complaints were disallowed each year and the company failed in every instance to appeal from the action of the commissioners. Efforts were made to enforce the collection of the taxes by the sale of the property, but in consequence of the agents of the defendant company making general publication that any purchaser of such lands for said taxes would only buy a litigation, all efforts to collect the taxes by forced sale proved fruitless.

In the year 1877 one Adam Smith, a large speculator in lands, made a contract with the defendant Railroad company to purchase about 100,000 acres of the Railroad company's lands in the County of Boone, a part of the consideration of the sale being that Mr. Smith was to assume and pay all the taxes of every nature.

Mr. Touzalin, was the general manager in Nebraska, of the Railroad company and Mr. T. M. Marquette was the general attorney for the Railroad company. Mr. Adam Smith and Mr. Touzalin, working together with a view of avoiding the payment of these taxes, induced the County Commissioners of Boone County to agree that a case might be brought in the courts, the purpose of which should be to have an adjudication as to what part of the taxes in question were illegal, if any, and what part legal.

With this end in view upon the part of the Commissioners of Boone County, they went to Lincoln in the County of Lancaster, to the headquarters of the Railroad company and upon suggesting that they ought to have an attorney, one M. H. Sessions was recommended by the Railroad company and Adam Smith. Complainant claims that this attorney was already employed by the Railroad company for this very purpose to advise the Commissioners that the taxes were all illegal; at any rate, certain papers were signed, and among them one employing Mr. Sessions to present the matter of the legality of the taxes in the Court. Another paper was signed authorizing Mr.

Sessions to appear in Court and consent to a decree wiping out the entire tax. It is claimed by the complainant that the signatures of the Commissioners were secured to this instrument by fraud; that Mr. Sessions drew the paper and read it to the Commissioners, omitting in the reading all that part of it which authorizes him to appear in Court and consent to a decree cancelling and wiping out all the taxes.

The Commissioners left Lincoln, leaving the matter in the hands of their attorney, as they supposed, to have the question as to the validity of the taxes presented to the Court in the regular way, upon testimony and argument, and to have the cause thus determined.

It is claimed by the complainant that part of the scheme upon the part of the Railroad company and Adam Smith was to have the case brought in the United States Court, for if brought in the District Court of Boone County, the inhabitants there must become aware of the fact and a consent decree wiping out the taxes could not be secured without arousing the suspicion of the tax payers of the County; and that thereupon they secured one Hunnewell, a citizen of Massachusetts and a stockholder in the Railroad company, to bring the suit in the United States Court.

On the fourth day of March, 1878, Horatio H. Hunnewell filed his bill in chancery in the Circuit Court of the United States, for the District of Nebraska, against the defendant company, the County of Boone and the County Treasurer of said county, in which he

states in substance that he is a citizen of the State of Massachusetts: that the defendant Railroad Company, the County of Boone and its Treasurer are citizens of the State of Nebraska; that he is a stockholder in the defendant Railroad Company and brings the suit on behalf of himself and all other stockholders, all of whom are citizens of the United States other than the State of Nebraska; sets forth the assessment and levy of taxes upon the lands aforesaid and alleges that said assessments and levy were defective, and so defective as to be illegal and void.

The reasons stated for such irregularity, defects and illegality are in substance that the assessors valued the property under the direction of the Board of County Commissioners; that the assessors did not go upon the lands; that no sufficient oaths were taken by the assessors and attached to the assessment rolls; that certain levies with regard to bridge taxes and road taxes and school bond taxes amounting in all to about $4,000.00, were void for want of authority to make the same. The bill does not state that the assessments of the defendant's property were to high, and does not state that the amount levied against the lands other than as above mentioned is in excess of such an amount as might fairly be imposed for revenue purposes.

The bill further states that though the taxes so assessed and levied are illegal and void, the Company refuses to take efficient measures to protect itself from said illegal exactions, and that before the filing of the

bill the officers of the Company proposed and were about to pay said illegal taxes. The complainant then prayed in his bill for a writ of injunction against the defendants therein, the County and its Treasurer from seeking to enforce the collection of, and the defendant company from paying said taxes or any part thereof, and that the Board of County Commissioners of said County be decreed to cancel said taxes and the record thereof upon the books and record of said County.

The bill of Mr. Hunnewell is a part of the record in this case and commences at page 10.

On the same day that the Hunnewell bill was filed, a stipulation was filed in the case that the complainant Hunnewell should have a decree as prayed for in his bill. This stipulation is missing from the files, but the record shows that it was signed by said M. H. Sessions, an attorney residing at Lincoln, Nebraska, on behalf of the defendant, the Board of County Commissioners of Boone County, and also its Treasurer, and by T. M. Marquette as solicitor for the complainant Hunnewell. Who signed it on the part of the Railroad Company, defendant, is uncertain, but Mr. Marquette thinks that O. P. Mason, an attorney of Lincoln, appeared for the Railroad Company. M. H. Sessions who signed on behalf of the County was not the County Attorney of Boone County, and T. M. Marquette who signed the stipulation on behalf of Hunnewell was then, for a long time before had been, and ever since has been general solicitor for the Railroad Company, defendant. Mr. Marquette was the

solicitor and the only counsel for Mr. Hunnewell in bringing the suit.

On the 8th day of March, 1878, four days after the bill and stipulation were filed, and without any subpœna or other process issuing or answer being filed, and without any appearance for the County except as shown by the stipulation, and without any evidence of any kind being introduced, a decree was entered as follows:

"H. HUNNEWELL,
vs.
BOARD OF COUNTY COMMISSIONERS OF BOONE COUNTY, *et al.*

"And now comes as well the said plaintiff, by *its* attorney, as the said defendants by their attorneys, and thereupon this action comes on for trial before the Court upon the issues joined between the parties; on consideration whereof, the Court do find the issue in favor of the plaintiff, and do find that the taxes set forth in said petition of plaintiff are void, as in said petition the said plaintiff has alleged."

"It is therefore ordered and adjudged that an injunction be, and the same is hereby allowed as prayed for in said petition of plaintiff and the same is hereby made perpetual; and that the said defendants, the County Commissioners and the Treasurer of said County, or their successors, are hereby perpetually enjoined from collecting or in any way attempting to collect or in any way intermeddling with the taxes set forth in said petition, and that the successors in office of the said defendants be, and the same are hereby perpetually enjoined from collecting or in any way intermeddling with said taxes; and it is further considered that the said plaintiff recover against the said defendants *its* costs in and about this suit in this behalf expended, taxed to be ..... dollars.

"(Signed) ELMER S. DUNDY, Judge."

The complainant County of Boone supposed this decree was entered after a full hearing and a determination by the Court that all the taxes were illegal and did not learn otherwise until shortly before this action was brought.

The taxes by this decree perpetually enjoined, together with interest, amounted to about $70,000.00, $65,000.00 of which plaintiff contends was a valid and legal tax beyond any question.

At the time this decree was rendered, the Board of County Commissioners, consisting of three members, were: Thomas L. Wilkinson, Chairman, Edwin Broadbent and T. H. Bowman. County Commissioners were then elected to serve a term of three years, one commissioner being elected each year, the oldest commissioner serving as chairman of the board. The term of office of Wilkinson, the chairman, expired January 1st, 1879; of Broadbent, Jan 1st, 1880; and of Bowman, January 1st, 1881. The first two of the commissioners named served to the expiration of their term of office, while Mr. Bowman served only for about a year after the rendition of said decree.

On the 9th day of June, 1883, the County of Boone, the complainant, filed its bill of complaint herein against the Burlington and Missouri River Railroad Company in Nebraska and Horatio H. Hunnewell, seeking relief against said decree, for the reasons here stated.

The bill in substance alleges that the lands of the defendant Railroad company, situate in Boone

County, were during all the years of 1873 to 1877, both inclusive, subject to taxation; that the taxes set forth in Hunnewell's bill were legally assessed and levied; that the valuation was a just and equitable one and assessed according to the valuation placed upon other lands in the county; that the assessors regularly assessed the property, took the oath and attached the same to their return, controverting all allegations in Hunnewell's bill as to the illegality of said tax, and showing affirmatively the validity thereof, and that all of the taxes so levied were delinquent, due and unpaid; that each year the Board of County Commissioners sat as a Board of Equalization under the laws of the State of Nebraska; that the Railroad company, defendant, appeared before said Board of Equalization, filed complaints with respect to the value; that such complaints were passed upon by the board and no appeal taken; that the Railroad company, Adam Smith its confederate and Hunnewell, fraudulently confederated together for the purpose of entering a suit in the United States Court to wipe out the entire levy of taxes imposed upon the railroad company's lands for the years mentioned; that at the time the decree was rendered in Hunnewell's case the indebtedness of Boone County was about $70,000, an indebtedness contracted in part upon the faith of the imposition of the tax eradicated by said decree. Attached to complainant's bill as exhibits were the petition in the Hunnewell case, the decree entered therein and exhibits showing the validity of the tax in question and other exhibits tending to show the

fraud and conspiracy to wipe out the tax, and prayed the court to vacate said decree for the reasons contended for in this argument.

On the 28th day of January, 1884, the Burlington & Missouri River Railroad Company in Nebraska and Horatio H. Hunnewell filed their answer in said cause, denying the validity of the tax substantially as set forth in the Hunnewell bill in the original case and all allegations of fraud with respect to the eradiction of the same. A second defence is set up in the answer, appearing at page 34 of this record, which contains, among other things, allegations of the sale of a large amount of the lands upon which said taxes had been imposed after the decree enjoining the collection thereof. The defendants set up as a third defence that on the 5th day of February, A. D. 1879, one Lorin Clark on behalf of himself and other tax payers of the County of Boone similarly situated filed in the Circuit Court a bill of complaint alleging in substance the matters alleged in complainant's bill herein, and asking for the same relief asked for in this action; that the Burlington & Missouri River Railroad Company in Nebraska, Horatio Hunnewell, the County Commissioners of Boone County and S. P. Bollman, Treasurer, were respondents in said action and appeared and entered a general demurrer, which demurrer on the 10th day of November, 1880, was sustained by the Court and the bill dismissed at the costs of the plaintiff. For a fourth defence the defendants say that complainant ought not to have his said action because he

failed and refused to bring the same within four years from the time the complainant discovered the fraud or pretended fraud set up in said bill of complaint and that said complainant, Boone County, allowed over four years to elapse after it had full knowledge of the whole transaction as to the entry of said decree herein complained of before any steps were taken to annul the same; and that the statute of limitations is a bar to this action.

A large amount of testimony was taken in the case and after argument a decree was rendered on the 24th day of November, 1885, dismissing the complainant's bill out of Court and is as follows:

"The County of Boone,
vs.
The Burlington & Missouri River Railroad Company in Nebraska and Horatio H. Hunnewell. } Decree 30. H.

"This cause came on to be heard upon the bill, answer, pleas, and reply and upon the evidence, both by documentary and depositions, and was argued by counsel and was duly submitted to the court; on consideration whereof the Court finds in favor of the defendants, and do find that the equities are in favor of the defendants.

"It is therefore ordered, adjudged and decreed by the Court that the complainant's bill stand dismissed out of this Court for want of equity; and it is further ordered, adjudged and decreed that the defendants have judgment against the complainant for costs, to be taxed at..... dollars.

"Complainant prayed an appeal which was allowed.
[Signed.] David J. Brewer, Circuit Judge."

"This decree was based solely on the ground of laches on the part of complainant.

D. J. Brewer, Circuit Judge."

The complainant contends that the decree was erroneous:

FIRST—For that in the case of Hunnewell against the Board of County Commissioners, Boone County and the Railroad company, the Court was without jurisdiction for want of requisite citizenship of the parties and fraud practiced upon the Court.

SECOND—The record clearly shows that the taxes perpetually enjoined by said decree were just and legal and that the proceedings to cancel and enjoin the same and the decree entered were void for fraud.

THIRD—For that even if the proceedings were not void for fraud they were void for want of capacity in the Board of County Commissioners to stipulate that a decree be entered cancelling and enjoining the collection of the taxes.

FOURTH—For that the Court erred in holding that the complainant was guilty of laches.

POINTS.

I.

THE COURT HAD NO JURISDICTION IN THE HUNNEWELL CASE.

We claim that the Court was without jurisdiction to enter the decree in the Hunnewell case for two reasons: 1st—The allegations in the complainant's bill as to why the action was brought by a stockholder for the company are not sufficient to give to the court jurisdiction; and 2nd—If the allegations were sufficient the testimony shows conclusively, beyond any question, that the suit was brought either by Hunnewell in collusion with the Railroad Company, or brought by the company in the name of Hunnewell without his knowledge.

The lands upon which the taxes sought to be enjoined were imposed belonged to the Railroad company and Mr. Hunnewell, the complainant, had no interest in the lands except as a stockholder in the company. The Railroad company and all the defendants were citizens of the State of Nebraska, while Hunnewell was a citizen of the State of Massachusetts. The reasons stated in the bill why Mr. Hunnewell brings the action instead of the railroad company are as follows:

"Your orator is, and has been for four years and more last past, the owner and holder of twenty-three hundred and sixteen (2316) shares of the stock of said Company. On the 5th day of August he requested the Board of Directors of said Company to take efficient

measures to protect it from illegal exactions of the taxes claimed by said Board of County Commissioners and said treasurer, which request the said Board refused, and the said Company, by its proper officers,—before the filing of the original bill herein—proposed and was about to pay the said illegal taxes. He and all the stockholders of said Company who numbered over one thousand persons, are citizens of the United States other than Nebraska, and the defendants are citizens of the State of Nebraska."

This is all the bill contains with respect to the refusal of the Company to bring the action and the consequent right of the stockholder to bring it in his own behalf and others similarly interested, and to invoke the federal jurisdiction on account of citizenship.

Hawes v. Oakland, 104, *U. S.*, 450.

The question under consideration was discussed in this case, and that the Court may readily compare the foregoing allegations in Hunnewell's bill with the allegations in the bill considered in the case of *Hawes v. Oakland*, we cite in full from that case at page 451, the allegations of the complainant upon which he based his right to bring the action as a stockholder to protect the interests of the Company.

"On the tenth day of July, 1878, he applied to the President and Board of Directors or Trustees of said Water Company, and requested them to desist from their illegal and improper practices aforesaid, and to limit the supply of water free of charge to said city to cases of fire or other great necessity, and that said Board should take immediate proceedings to prevent said city from taking water from the works of said Company for any other

purpose without compensation. But said Board of Directors and Trustees have wholly declined to take any proceedings whatever in the premises, and threaten to go on and furnish water to the extent of said Company's means to said city of Oakland free of charge, for all municipal purposes as has heretofore been done, and in cases other than cases of fire or other great necessity, except as for family uses hereinbefore referred to; and your orator avers that by reason of the premises, said Water Company and your orator and the other stockholders thereof have suffered, and will, by a continuance of said acts, hereafter suffer great loss and damage."

These allegations to invoke federal jurisdiction are broader than those of the Hunnewell bill. A demurrer was interposed to the bill in that case, one of the grounds thereof being:

"1. That appellant has shown no capacity in himself to maintain this suit, the injury, if any exists, being to the interests of the corporation and the right to sue belonging solely to that body."

On this ground the Court below sustained the demurrer, which ruling was sustained by this Court. In the opinion of the Court, Mr. Justice Miller says:

"This practice has grown until the corporations created by the laws of the States bring a large part of their controversies with their neighbors and fellow citizens into the courts of the United States for adjudication, instead of resorting to the State courts, which are their natural, their lawful and their appropriate forum. It is not difficult to see how this has come to pass. A corporation having such a controversy, which it is forseen must end in litigation, and preferring for any reason whatever that this litigation shall take place in a federal court, in which

it can neither sue its real antagonist nor be sued by it, has recourse to a holder of one of its shares who is a citizen of another State. This stockholder is called into consultation, and is told that his corporation has rights which the directors refuse to enforce or to protect. He instantly demands of them to do their duty in this regard, which of course they fail or refuse to do, and thereupon he discovers that he has two causes of action entitling him to equitable relief in a court of chancery, namely, one against his own company, of which he is a corporator, for refusing to do what he has requested them to do; and the other against the party which contests the matter in controversy with that corporation. These two causes of action he combines in an equity suit in the Circuit Court of the United States, because he is a citizen of a different State, though the real parties to the controversy could have no standing in that court. If no non-resident stockholder exists, a transfer of a few shares is made to some citizen of another State, who then brings the suit. The real defendant in this action may be quite as willing to have the case tried in the Federal Court as the corporation and its stockholders. If so, he makes no objection and the case proceeds to a hearing. Or he may file his answer denying the special grounds set up in the bill as a reason for the stockholder's interference, at the same time that he answers to the merits. In either event the whole case is prepared for hearing on the merits, the right of a stockholder to a standing in equity receives but little attention, and the overburdened courts of the United States have this additional important litigation imposed upon them by a simulated and conventional arrangement, unauthorized by the facts of the case or by the sound principles of equity jurisdiction.''

In commenting upon the case of *Dodge* v. *Woolsey*, (18 How., 331), the learned justice says:

"But, in addition to the existence of grievances which call for this kind of relief, it is equally important that

before the shareholder is permitted in his own name to institute and conduct a litigation which usually belongs to the corporation, he should show to the satisfaction of the Court that he has exhausted all the means within his reach to obtain, within the corporation itself, the redress of his grievances, or action in conformity to his wishes. He must make an earnest; not a simulated effort, with the managing body of the corporation, to induce remedial action on their part, and this mnst be made apparent to the Court. If time permits or has permitted, he must show, if he fails with the directors, that he has made an honest effort to obtain action by the stockholders as a body, in the matter of which he complains. And he must show a case, if this is not done, where it could not be done, or it was not reasonable to require it.

The efforts to induce such action as complainant desires on the part of the directors, and of the shareholders when that is necessary, and the cause of failure in these efforts should be stated with particularity, and an allegation that complainant was a shareholder at the time of the transactions of which he complains, or that his shares have devolved on him since by operation of law, and that the suit is not a collusive one to confer on a Court of the United States jurisdiction in a case of which it could otherwise have no cognizance, should be in the bill, which should be verified by affidavit.

It is needless to say that appellant's bill presents no such case as we have here supposed to be necessary to the jurisdiction of the Court.

He merely avers that he requested the president and directors to desist from furnishing water free of expense to the city, except in case of fire or other great necessity, and that they declined to do as he requested. No correspondence on the subject is given. No reason for declining. We have here no allegation of a meeting of the directors, in which the matter was formally laid before them for action. No attempt to consult the other share-

holders to ascertain their opinions, or obtain their action. But within five days after his application to the directors this bill is filed. There is no allegation of fraud or of acts *ultra vires*, or of destruction of property, or of irremediable injury of any kind.''

What the Court here says with reference to the bill in that case applies with even greater force to the case now under consideration.

And there is further objection to the bill in the Hunnewell case in that it alleges that the action is brought by the complainant on his own behalf and on the behalf of all the other stockholders of the company, all of whom, including himself, are citizens of the United States other than the State of Nebraska, and that the company is a citizen of the State of Nebraska. This is probably the most convenient mode yet devised for a corporation to enter the Federal Courts. It has, according to the theory of the complainant in that case, a double entity; all of the stockholders being one and the articles of incorporation the other, and all the stockholders, being citizens of several States may sue in the Federal Court, the articles of incorporation of their own company, where the corporation grant was acquired in another State, alleging the corporation itself to be a citizen of such other State.

In the case of *Muller v. Dows*, (94 U. S., 444), Mr. Justice Strong, delivering the opinion of the Court said:

"A corporation itself can be a citizen of no State in the sense in which the word 'citizen' is used in the Con-

stitution of the United States. A suit may be brought in the Federal Courts by or against the corporation but in such a case it is regarded as a suit brought by or against the stockholders of the corporation and for the purposes of jurisdiction it is conclusively presumed that all the stockholders are citizens of the State which by its laws created the corporation.''

We do not believe that this Court is yet prepared to say that all the stockholders of a corporation may be citizens of one State and the corporation itself—the naked legal entity, the artificial person invisible and intangible—can be a citizen of another state and invoke the Federal jurisdiction on the ground of citizenship in an action by the one against the other.

In the case of Hunnewell, why did not the stockholders, all of whom were represented by Mr. Hunnewell, take action in the premises as they might do to protect the interest of the company as a corporation, if its rights were menanced by the threatened collection of the taxes in question? As we have heretofore quoted from the language of Mr. Justice Miller: "He must show a case if this is not done, where it could not be done or it was not reasonable to require it."

But again: Why should a stockholder, either on his own account or on account of the other stockholders or any number of them pretend to arrogate to himself the determination of the question as to whether the corporation should pay a tax justly due?

In the case under consideration, however, we go much further than disputing the sufficiency of the

allegations of the Hunnewell bill with respect to jurisdiction, and we controvert such allegations as are made in that behalf and conclusively prove that the name of Hunnewell was used simply to invoke the Federal jurisdiction.

The action was brought for Mr. Hunnewell by T. M. Marquette, who at the time was the general attorney for the Burlington & Missouri River Railroad Company in Nebraska, against whom the action was brought, and the bill was sworn to by A. E. Touzalin as agent for Horatio H. Hunnewell, the complainant. At the time Mr. Touzalin was the general manager in Nebraska of the Railroad company against which he was bringing suit, and the general land commissioner of the company. The bill was sworn to before George B. Harris as notary public, who at the time was an officer of the Railroad company. All the proceedings had from the beginning with respect to the taxes in question were conducted by these officers of the Railroad company, who had complete charge of its affairs in Nebraska. At page 205 of the record A. E. Touzalin in testifying with respect to the taxes in question says:

"I was interested as the agent of the company to get these difficulties cleared up so that the property in that county could be put in shape for settlement and sale. The commissioners, I think, clearly saw just as we did, that as long as this illegal assessment and illegal levies and litigation in connection therewith remained unsettled questions, that we could not settle and sell the lands at any price, and it was in order to get the difficulties

that were in the way cleared up beyond any question that it was determined to place the matter in the courts. The assessments and the levies of taxes were very carefully and very thoroughly examined, and I do not think there was any doubt in any mind that some portion of the tax would be held as valid by a court of law, and the question as to how much should be paid into court or out of court to the county was considered.''

It will thus be seen that Mr. Touzalin, who had full charge of all the affairs of the Railroad company in Nebraska, and who had full control of the matter of the payment of taxes, made arrangements with the county commissioners to have a suit brought in the courts to determine the validity of the taxes in question.

At page 25 of the Record appears Exhibit "L," showing the alleged employment of M. H. Sessions as attorney for the county "to enter an appearance for the County of Boone, Nebraska, in any suit which may be brought by the said Burlington & Missouri River Railroad Company in Nebraska or by any stockholder thereof, and to take action as directed by said commissioners and to waive issuance and service of a subpœna in the case."

This agreement was written in the office of the Railroad company at Lincoln, under the supervision of A. E. Touzalin for the Railroad company. Thus it will be seen that arrangements were made entirely by the Railroad company, through those having entire management of its affairs in Nebraska, to bring a suit with respect to the taxes in controversy. With regard to all

these proceedings we venture to say Mr. Hunnewell knew absolutely nothing.

But now the question presents itself to the managers of the railroad company as to how best to accomplish their purpose of wiping out of existence a valid revenue charge of over $70,000. It would not do to bring the case in the State Court in Boone County, for there the attempted fraud could not be accomplished without the knowledge of some of the citizens of that county. The plan was therefore adopted of using the name of Hunnewell, and cause him to allege that he requested the Board of Directors of said company to take efficient measures to protect it from illegal exactions of taxes claimed by said board of County Commissioners and said Treasurer, which request the board refused and that said company by its proper officers, before the filing of the original bill, had proposed and was about to pay the said illegal tax.

How startling is this allegation in the bill in view and in the light of the record herein, showing that for four years then last past the officers having full charge of the railroad affairs in the State of Nebraska, and the payment of the taxes, had refused to pay the taxes, and that for more than seven months prior to said 5th day of August, these same officers whom it is alleged will pay the taxes, were making arrangements, and finally consummated the same before the 5th day of August, and before the bill was filed by Hunnewell, to have proceedings instituted to have the entire tax wiped from the tax list.

At page 188 of the Record, Mr. Marquette testifies as follows:

"My name is T. M. Marquette; I am the general counsel for the Burlington and Missouri River Railroad Company in Nebraska and have been such since January, 1870. I was also attorney for Horatio H. Hunnewell in the case of Horatio H. Hunnewell against the Board of County Commissioners of Boone County and the Burlington and Missouri River Railroad Company in Nebraska, and the Treasurer of that county. I was not present at the time the papers were prepared on the 30th of January, 1878, which papers have been given in evidence in this case, and had nothing to do with the procuring of the decree or judgement which is now sought by this suit to be set aside and cancelled, until some time after that time. I refused to act upon anything done there, but did after the Board of County Commissioners of Boone County had passed a resolution ratifying this act and authorizing Mr. Sessions to appear and to waive summons and to compromise or settle the taxes on the lands of the Railroad company in Boone County; *after that period and after waiting for authority from Mr. Hunnewell, a stockholder, to commence the suit*, the decree of which is now asked to be cancelled, I then met Mr. Sessions in reference to the matter. I prepared a bill, as I understood the decree would be entered probably by agreement I was not as careful in the preparation of the bill as I otherwise would be and there may be some data and figures that are not altogether correct; but in the main it is aimed to be correct."

Mark this testimony and compare it with the allegations of the bill that the officers were about to pay the taxes. Before this bill was signed the Railroad Company, through its officers in Nebraska, had agreed to eradicate this tax and Mr. Marquette testi-

fies that he "*prepared a bill as I understood the decree would be entered probably by agreement.*"

At page 57 of the record, appears the agreement that had already been entered into before this bill was drawn, and which was then in the possession of the Railroad Company, containing this astounding provision.

"Now therefore, the party of the second part, (the County of Boone) hereby agrees by its commissioners and by its authorized attorney, M. H. Sessions, to enter into the necessary stipulation and to have decree of Court entered up in the Circuit Court of the United States for the District of Nebraska, eradicating the whole of the taxes now charged against the lands of the first and third parties, for the above years, all of said taxes having been examined and agreed upon as being illegal and void."

It was thus arranged that the suit should be brought in the United States Court, and, that the matter of the use of Hunnewell's name as a subterfuge may be set at rest, I quote again from the testimony of Mr. Marquette, the general attorney for the road, at page 188.

"After that period and after waiting for authority from Mr. Hunnewell, a stockholder, to commence the suit, the decree of which is now sought to be cancelled," etc.

Therefore, the allegations of the bill upon which Federal Jurisdiction was invoked are wiped away by this testimony. Instead of Mr. Hunnewell seeking to have the Railroad Company bring the suit, the Railroad Company was "*waiting for authority from Mr.*

Hunnewell, a stockholder, to commence the suit." It is with confidence, therefore, we say that in the Hunnewell case the Court had no jurisdiction. The proceedings to acquire jurisdiction can scarcely be denounced in too strong terms; and this Court ought not for a moment to allow a decree to stand secured under such circumstances, and when the Federal Jurisdiction was invoked by such a subterfuge as is here presented. Though the Court was without jurisdiction to make the Hunnewell decree; yet while the decree stands, no officer would attempt to collect the tax, therefore it should be vacated.

II.

THE TAXES ENJOINED AND CANCELLED BY THE HUNNEWELL DECREE WERE VALID, JUST AND PAYABLE.

The objection made by the Railroad company to the validity of the taxes in question (except to some four or five thousand dollars thereof) is confined entirely to the initiatory steps to impose the same—that is, the assessment. It is conceded that all the lands were taxable for general revenue, for State, County and school district purposes, for which the levy was made.

The assessed valuation is not complained of in the Hunnewell bill nor in the answer in the present case and if it were it would be unavailing. The testimony shows and is undisputed that the railroad company, by its proper agent, thereunto authorized, appeared each year before the board of equalization and made

complaint on the valuation. The same was passed upon by the board of commissioners, being the authorized body for that purpose and no appeal was taken from the decision of the board sustaining the assessed valuation.

In the case of *The Burlington & Missouri R. R. Co. in Nebraska, v. Seward County,* 10th *Neb.* 211 (216). The Court, speaking by Mr. Justice Lake, said:

"Where a tax-payer feels himself wronged, either because his own property is valued too high, or that of others too low, or omitted altogether from the lists, a summary and inexpensive remedy is provided by the resort to the County Board of Equalization, a tribunal expressly created to hear complaints and make corrections of the assessment roll, preliminary to the levying of taxes, to the end that every person shall bear his due proportion, and no more, of the public burdens."

It will not be contradicted and for that reason we do not cite the statutes or authorities that the party complaining before the board of equalization is bound by the decision of that board with respect to the assessed valuation, unless he appeals therefrom to the District court of the State.

The complaint of the defendant Railroad Company was, and is, that the assessors did not take the oath prescribed by law and attach the same to their returns, and that the taking of such oaths and the return of the same attached to their assessment rolls was jurisdictional and failing in that respect the assessment was wholly void.

Another point made by the Railroad Company in regard to the assessment that may be here noticed, is that, for the years 1873 and 1874 the assessors did not assess the property according to their own judgment, but assessed the same with respect to valuation under the directions of the Board of County Commissioners, but as the assessors testified that they assessed the property upon their own judgment and assessed it the same as other property similarly situated, and as the question of the valuation in the assessment was finally determined by the action of the Board of County Commissioners, sitting as a Board of Equalization, this complaint is entitled to no further consideration.

We will here give the sections of the Statutes of Nebraska bearing upon the matter in controversy with respect to the assessment of the property.

Section 5, of Chapter 66, entitled Revenue, of the General Statutes of Nebraska, 1873, is as follows:

"Sec. 5. On or before the first Monday of February in each year, the County Commissioners of each county are required to furnish the precinct assessors with suitable notices and blank forms for the assessments and such instructions as may be needful to secure full and uniform assessment and returns; at the same time furnish each precinct assessor a list of all the entered lands in his precinct subject to taxation."

"Sec. 12. The assessor shall take and subscribe an oath to be certified by the officer administering it, and attached to the assessment roll; which oath is to be in substance as follows:

I, [A. B.] Precinct Assessor, in and for the —— precinct in —— County, Nebraska, do solemnly swear

that the value of all property, moneys and credits of which a statement has been made and verified by the oath of the person required to list the same is hereby truly returned, as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person, or body corporate, I have diligently and by the best means in my power endeavored to assess the true amount and value, and that as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.''

"SEC. 24. On or before the second Monday of April annually, the several precinct assessors shall make out and deliver to the County Clerk an assessment roll, consisting of the following items, to-wit:

"FIRST. A list of all the taxable lands in such precinct in numerical order, beginning with the lowest numbered section in the lowest numbered township in the lowest numbered range in the precinct, and ending with the highest numbered section, township and range with the number of acres in each tract set opposite the same in a column provided for that purpose, and the assessed value thereof in another column and the name of the owner or person listing the same in another column with the columns of acres and values footed up.''

Section 27 of the same chapter provides for the holding of a Board of Equalization where the complaint may be made in regard to the assessment as we have hereinbefore stated.

"SEC. 28. As soon as practicable after the assessment rolls are equalized and corrected, as provided in the last section, and before the first Monday of May, next ensuing, the County Clerk shall make out an abstract thereof, containing the whole number of acres of land listed in the County and the total value thereof."

"SEC. 32. On the first Monday of July of each year the County Commissioners shall meet at the county seat to levy the tax necessary for the current year and they may levy the taxes at any time after the first Monday in July."

The foregoing are the principal provisions with respect to the procedure for the imposition of taxes for general revenue purposes. For each of the years in dispute the several precinct assessors assessed the lands belonging to the Railroad company in their respective precincts upon blanks furnished by the County Commissioners and returned the same to the County Clerk.

The objection is made and claimed to be jurisdictional, that the assessors did not take and subscribe the oath provided by law and set forth herein.

The property however was placed upon the tax lists of Boone County by the Clerk and the value thereof as returned by the assessors, and a tax levied against the property by the Board of County Commissioners, according to Section 22 cited above. The proof shows that the assessors were duly qualified and subscribed to the oath required.

Mr. John Peters was called as a witness in behalf of the complainant, and at page 403 he states that he

was County Clerk at the time the testimony was taken in the year 1884, and that he had been County Clerk since the fall of 1873, continually up to that time. At pages 401 and 402 are found the Assessor's oaths taken from the years 1876 and 1877, which oaths are in the exact language of the statutes. At page 409 we show the agreement entered into, where the introduction of certified copies of the oaths of the other Assessors for the years 1876 and 1877 are waived for the purpose of avoiding unnecessarily encumbering the records, and it is agreed that they are the same as the oaths introduced in evidence. Thus for the two years 1876 and 1877, the proof is conclusive that the Assessors took the prescribed oaths and certified copies of one for each year, with an agreement that the others are the same are in evidence.

At pages 336, 337 and 338 are set forth oaths taken by several Assessors for different years in dispute, upon entering upon the duties of their office.

Mr. Peters, at page 407, further testifies that for the years 1873, 1874 and 1875, he personally knows that the Assessors took the required oath and certified their returns, but that he is unable to find the same among the records of the County. As to the nature of this oath he testifies as follows:

"Ans. 41—I can't say that they were the same as these, but I will state this—that the oaths that they subscribed was provided for in the statute. They subscribed to the statutory form as provided at that time. I swore them myself, and I know that they corresponded with that.

In the early days of Boone County the assessments were made on sheets of paper. The oaths were also subscribed on sheets of paper, the County had no books at that time; and the records or returns of Assessors have been moved about from place to place in the Court House, and I cannot tell much about them at this time. Some of them may be lost and some of them may be destroyed, we had no place to keep them at this time. They had to be nailed up in a box. We had no place to keep them, and they were accessible to any party."

Again, on cross-examination, on page 407, Mr. Peters further testifies:

"Int. 1—Do you know, as a matter of fact, of your own knowledge, whether the oaths for 1875, 1874 and 1873 were filed or not?

"Ans. 1—I presume they were.

"Int. 2—I ask if you know it?

"Ans. 2—Well, I would say yes, they were filed, because I know they were taken. They were all rolled up. Sometimes I found them in a corner of a box."

Mr. Peters afterwards states that as to 1873 he is not so certain.

At page 409 James H. Robinson states that he was assessor in 1874 and that he is certain that he subscribed to the oath and made return according to the statute.

There is not, in the entire record, a particle of testimony contradicting the testimony of Mr. Peters that the oaths were properly taken and subscribed by the assessors.

The Railroad company further seeks to rely on the alleged fact that for some of the years the oath was not attached to the returns, and cite the case of *Morrill v. Taylor*, 6th *Neb.*, 241. That was a case at law where it was sought to maintain title to property by virtue of a tax deed. Our Court has always held that in order to divest one of his real estate by virtue of a tax deed it must be shown that all the proceedings to the most minute particular to impose the tax have been complied with, and in the case last cited the Court holds that there being no proof of the assessors having subscribed to the necessary oath, the proceedings were not sufficiently regular to divest the owner of his title.

But an entirely different rule obtains when the question arises in equity to restrain the collections of the taxes otherwise just and equitable.

In the case of *Lyman v. Anderson*, 9 *Neb.*, 367, the Court, at page 375, says:

"This oath should be attached to the assessment roll, and in this instance appears to have been so attached. But whether actually attached or not, if actually made at the proper time and filed with the assessment roll as a part thereof, the mere fact that it was not attached thereto will not of itself invalidate the assessment."

In the case of *McClure v. Warner*, 16 *Neb.*, at page 449, the Court says:

"The essential requirement is that the oath be taken by the assessor. If the assessor actually makes the required oath at the time the assessment roll is returned, the

failure to attach the same to the assessment roll or to return it with such roll will not affect the validity of the tax.''

In the case of the *South Platte Land Co. v. The City of Crete*, 11 *Neb.* 344, at page 348, Lake, J. speaking for the Court says:

"And what we have thus far said in effect virtually disposes of the only other point made which it is necessary to notice, namely: that 'no oath was attached' to the assessment roll by the assessor. Whatever effect the want of such an oath might have in an action at law it certainly can have none in a case like this. A tax in all other respects proper, levied upon a valuation unverified, but fair, is just as equitable, and the owner of the property is in conscience just as much bound to pay it as if the required verification had been duly made.''

We have thus established beyond question and beyond doubt that taxes to the amount of at least $65,000.00 cancelled by the decree, herein sought to be set aside, were absolutely legal, just and valid.

III.

THE PROCEEDINGS TO SECURE THE DECREE ENJOINING AND CANCELING THE TAXES WERE A FRAUD UPON THE COMPLAINANT AND AN IMPOSITION ON THE COURT.

Presenting this point we cannot avoid going into the evidence somewhat in detail.

The Railroad Company refused to pay the taxes or any of them for any of the years in dispute and the

officers of the county were unable to force collection of the taxes by the sale of the lands of the Railroad Company for the reason that the agents of the Company made it very generally known that any one purchasing any of the lands would be purchasing a litigation against the Railroad Company.

For each of the years the Railroad Company sent to the County of Boone a list of its lands in that county with the request that the taxes as assessed and levied be extended on those lists and returned to the Company. This was done.

After the 8th day of February, 1875, the Railroad Company gave as a reason for not paying any of the taxes, the fact that the title to the lands in question was in dispute, the fact in that regard being that on the 8th day of February, 1875, the United States filed its bill of complaint against the Burlington and Missouri River Railroad Company in Nebraska, in the Circuit Court of the United States for the District of Nebraska, seeking to set aside the patents granting and conveying to the Railroad Company 1,200,000 acres of land, on the ground that the same was outside of the limit defined in the Act of July 2nd, 1864, with respect to the grant of lands to the Railroad Company. This action involved the title to the lands then owned by the Railroad Company in Boone County.

On the 15th day of May, 1876, Mr. Justice Miller, sitting on the circuit, rendered an opinion in favor of the defendant Company and dismissed the bill. This

opinion is at page 316 of the record. In this case brought by the United States, upon the hearing on the original bill, it was held that 150,000 acres of land were wrongfully patented to the Railroad Company and an amended bill was filed so that it should be determined specifically what lands under the patents to the Railroad Company could be retained. All the lands in Boone County were retained by the Company and the title thereto in the Company was held valid.

Efforts were made from time to time by the Railroad Company to get the Commissioners to vacate the taxes for the several years, or a large part thereof, the Railroad Company stating that it was difficult to sell their lands in that county while the lien for the taxes for the several years attached thereto, and went so far as to state that they would not sell the lands, and thereby impede the development and settlement of the county, unless the Commissioners vacated said taxes.

During all the time of the controversy with respect to these taxes, A. E. Touzalin was the General Manager and the General Land Agent of the Railroad company in Nebraska, and had full control of all its affairs. Among other things it was his especial duty to have charge of all the lands and manage the same, pay the taxes, &c. And Mr. Marquette was the General Attorney for the road in Nebraska.

In the month of August, 1877, one Adam Smith appeared in Nebraska as a land speculator, having

been a large purchaser of lands from other railroads, and submitted propositions to Mr. Touzalin to buy all or a large portion of the Company lands in Boone County, proposing to make large improvements in the county, and to bring into the same a large number of settlers. Mr. Smith brought with him a contract executed by the Burlington and Missouri River Railroad Company in Nebraska, by C. E. Perkins, Vice-President, and himself, subject to the approval of A. E. Touzalin, manager of the affairs of the Company in Nebraska.

This agreement was dated the 28th day of July, 1877, and is found at page 146 of the record. The substance of this contract is, that the Railroad Company agrees to sell to Mr. Smith, 65,000 acres of land in Boone County at $1.00 per acre, and any further selection that Smith may make of Boone County lands at $1.25 per acre. The agreement contains the further provision that the second party, Mr. Smith, agrees in addition to the payment to the Railroad Company of the prices on the lands aforesaid, to assume the responsibility for, and payment of the whole of the taxes, which were levied upon all the lands of the Burlington & Missouri River Railroad Company in Boone County, Nebraska, for the years 1873, 1874, 1875, 1876 and 1877. And the agreement states, "*and it is a part and portion of this agreement and one of the important considerations paid by the said second party that the said taxes shall be assumed and paid by the said second party; the payment or settlement of said taxes to be consummated*

on or about January 1, *A. D. one thousand, eight hundred and seventy-eight.*"

It is thus seen that the Railroad Company recognized the validity of the tax.

Mr. Smith in said agreement further stipulated to devote himself to the sale and settlement of the land selected, and agreed not to sell or purchase the lands of any other railroad company with certain exceptions. The agreement further stated, "by the first day of January, eighteen hundred seventy-eight, the second party is to have effected *a complete legal settlement or payment of the taxes now outstanding upon all Burlington & Missouri River Railroad Company in Nebraska lands in Boone County, for the years* 1873 *to* 1877, *inclusive; and the legal settlement is to be in such course of progress as to be satisfactory to the first party.*"

As a further consideration for the purchase of said lands, Mr. Smith agreed to grade a wagon road of forty to forty-five miles in length, between Columbus or Clarksville on the Union Pacific Railroad, and Albion in Boone County, the graded road to be completed by the first of September, 1878.

This contract was approved and countersigned by A. E. Touzalin in August, 1877, and Mr. Smith proceeded at once to make his selection of lands and finally purchased about 70,000 acres. As a part of the consideration for this purchase was the payment of the taxes, Mr. Smith proceeded at once to consult with Mr. Touzalin upon the question of the disposi-

tion of those taxes, as they were now jointly interested in avoiding the payment of these taxes.

From that time on the Railroad company, through Mr. Touzalin and Mr. Marquette, acted with Mr. Adam Smith in an effort to secure the vacation and cancellation of all the taxes levied upon the Railroad lands in Boone County, as well those sold to Adam Smith as those still retained by the company. At page 203 Mr. Touzalin says:

"The railroad company would not have made a sale of lands to Mr. Adam Smith to such a very large amount at such a very low price under any ordinary circumstances except those which prevailed at that time. The lands had been assessed at very large figures; *had been legally taxed*, as we were advised by counsel: the grasshopper trouble was keeping out immigration from Nebraska and the country generally was in a state of depression, as I have stated, and it was under such circumstances that we made this large sale of lands at low prices to Mr. Adam Smith, *obliging him to clear up the taxes by compromise, or by action in the courts.*

Mr. Smith was also to help the company to get rid of the whole tax.

In pursuance of this purpose and design, Mr. Smith visited Boone County, had a consultation with the County Clerk and afterward with the commissioners of the county, or at least two of them, and after representing to these commissioners the benefits to accrue to Boone County by a cancellation of all the taxes levied for the years 1873 to 1877 inclusive by making the land subject to ready sales and securing

immigration, on the 18th day of July, 1877, secured two of the Commissioners to sign a contract with him, which is set forth at page 55, reciting that whereas the railroad company for years past had neglected to pay the taxes upon their lands in Boone County and disputed the legality of the taxes, that the county was sparsely settled, that Adam Smith had made a proposition to buy 100,000 acres of lands in Boone County for the purpose of settling and improving the same as fast as could be done, and agreed to make a graded wagon road between Albion and the City of Columbus or the town of Clarksville; that in consideration of the same the County Commissioners of Boone County agreed with Adam Smith that all the taxes then levied upon the Railroad company's lands in Boone County, should be abated and cancelled in such a way and manner as would be legal and proper so as to relieve said lands from any and all liens in consequence of said taxes.

And Adam Smith further agreed that upon all lands thereafter purchased by him he would pay the taxes afterward to be levied, and was to get the assurance of the Railroad company that it would also pay the taxes thereafter to be levied upon their lands.

Armed with this agreement, Mr. Smith returned to Lincoln to the officers of the railroad company and on the 28th day of July, 1887, entered into the agreement before referred to to purchase railroad lands in Boone County.

The agreement signed by two of the County Commissioners of Boone County and Adam Smith was not entered into by the Board of County Commissioners in session as such Board, but was signed without any meeting of the Board or in session, and as individuals, probably as evidence that in a session of the Board they would secure this contract. Mr. Smith from time to time thereafter sought to get a meeting of the Board of County Commissioners to ratify this contract, but failed to do so.

With the execution of this agreement commenced the active fraud of the Burlington & Missouri River Railroad Company in Nebraska and Mr. Smith against the Board of County Commissioners of Boone County and the county, to wholly deprive the people of the taxes imposed upon the railroad company lands.

The County of Boone is a western county, at that time sparsely settled and the commissioners were not men of any considerable business knowledge or capacity. In this agreement referred to it is seen that Mr. Smith promises to pay taxes in the future and to secure the same action on the part of the railroad company, as though such security was not already given to the County by the constitution and laws of the State.

The object of the Railroad Company and Smith was to secure a total cancellation of the taxes. The plan pursued was to have the Board of County Com-

missioners agree to have a suit instituted in Court with respect to said taxes, leading the Commissioners to believe that such suit would be to test the legality of the taxes, and under this cover secure a decree vacating all thet axes.

The Board of County Commissioners acted with these parties, believing the proceedings were in good faith, in so far as to submit the matter of the taxes to the Court, having in view the sole object of determining what taxes were legal and what taxes were illegal.

With respect to the agreement referred to, Mr. Broadbend, one of the Commissioners, testifies at page 75:

"Well Adam Smith came here and he said he wished as an individual to buy 100,000 acres of land at that time belonging to the B. & M. Railroad Company in Boone County and he said that he would not touch the lands unless the taxes could be removed, and he asked us as County Commissioners if we would rebate the taxes that were then on the lands, and I for my part told him that we could not do any such thing. 'While I am well aware of that,' said he, 'will you submit it to the Court and allow the Court to remove?' 'Yes,' said I, 'I am willing for the Court to decide.'"

Again at page 77:

"He asked us if we would be willing to remit the taxes on the B. & M. lands in this County and I told him that it would be contrary to law, even if we were willing to do it, and he said, 'Are you willing to submit it to the Court?' and I said, 'Yes, we are willing to submit it to the Court and let the Court decide.' Then there was an

agreement drawn up between the County Commissioners and Mr. Adam Smith to that effect.''

Again at page 78 the same witness testifies that he stated he would like to have counsel upon the matter and he was then urged by Mr. Smith to go to Lincoln to get counsel, and says:

"Ans. 41—I was going to say that I said for my part I should like to have counsel with regard to it before we ratified it—in the court house, that conversation was—and they said that was all right and proposed that we should go somewhere to get counsel and ratify this contract and it was finally agreed to go to Lincoln and get counsel and ratify the contract.''

"Ans. 46—I said that I wanted counsel and I proposed to go to Fremont or some other town where we could get an attorney that was disinterested in the case and that would be our attorney, so that neither us nor the County would do anything but what was legal and right and that was the object that I had in this suggestion.''

Adam Smith thereafter secured the three County Commissioners constituting the board to go to Lincoln to the headquarters of the Burlington Railroad Company to consult with the officers of that company for the purpose of devising some method whereby the agreement to vacate the taxes could be carried out.

On the 30th day of January, 1878, the three members of the Board of County Commissioners and the County Clerk went to Lincoln and at the depot there met Mr. Adam Smith. The parties went together to the office of the Burlington Company and

met there the officers of the company. One of the Commissioners again suggested that they ought to have counsel, and some one in the railroad office, evidently in the interest of the railroad company, suggested that the Commissioners employ one M. H. Sessions, an attorney at Lincoln.

Mr. Sessions was thereupon sent for, and came to the office of the Railroad Company. That Mr. Sessions had been previously employed by the Railroad Company or Adam Smith which was the same thing, for this purpose, is shown by the testimony beyond controversy; and that employment could have been no other than to advise the Commissioners that the taxes were all illegal and to appear for the County to consent to a decree eradicating the whole tax, a service he faithfully executed in behalf of the Railroad Company and Adam Smith.

Mr. Broadbent, one of the Commissioners, testifies that the officers of the Railroad Company told them that Mr. Sessions was a suitable man for that business, that they did not recommend any one else, and that he came to the Railroad office upon being sent for. And at page 79 of the record says:

"Ans. 60—I asked Mr. Sessions what we could do with regard to the collection of the taxes on the B. & M. Railroad Company lands in Boone County. His answer was, that they wasn't worth that—(snapping his fingers.)

"Int. 62—Had you stated to Mr. Sessions any of the particulars relative to these taxes, what they were, how they were levied, or what had been done with regard to them before that?

"Ans. 62—No sir, that was the first that I ever said to him.

"Ans. 68—I asked him what could be done with regard to them.

"Ans. 69—He said there was no way that they could be disposed of, only to submit it to the Court and let the Court grant a perpetual injunction on all illegal taxes, and I told him that we was willing to submit it in that way and let the Court decide it.

"Int. 70—What was next said or done in reference to it?

"Ans. 70—I do not remember anything further until they drawed up some writings to be presented to the Court.

"Int. 71—Who drew up these writings?

"Ans. 71—I suppose that Mr. Sessions did; I did not see them drawn up as I remember. We depended on him to do it, and he presented them to us afterwards. I suppose that he done it.

"Int. 74—Now state what those papers were—that is, what was the nature of them?

"Ans. 75—Well, if I might be allowed, I think I could give you my idea in a very few words with regard to this whole thing. My idea is as I have already stated. We, as County Commissioners nor any other power less than the legislature, had a right to remit any taxes that was legally levied, and that our object was to have removed anything that was not legal and could not be collected, so that the lands might be settled and we could go on with improving the country. This was our main object and what we was trying to do. We did not attempt to remove any taxes that was legal; we did not claim that we had any right to, and we didn't attempt to do anything but what was right and legal, as we understood the law."

Other witnesses corroborate this statement.

It will thus be seen what the object of the Commissioners was and that they depended wholly upon Mr. Sessions.

Many papers were then drawn up, as is shown by the record, and these papers show how easily the Commissioners could be imposed upon, and how willing the Railroad Company was to impose upon them. Bonds were drawn for the construction of roads; bonds were drawn for the payment of taxes thereafter and other such papers, all wholly illegal and void and having no pertinence whatever to the question of the revenue of the county or the matter then under consideration.

The intention of the Commissioners is shown by the employment of Mr. Sessions. One of the papers signed at the time in the Railroad office, found in the record on page 119, is as follows:

"LINCOLN, Nebraska, Jan'y 30th, 1878.

"That whereas the taxes on the lands of the B. & M. R. R. R. Co. in Nebraska, in Boone County, both State, county and school taxes are unpaid for the years 1873, 1874, 1875, 1876 and 1877;

"And whereas the said Company disputes the legality of said taxes and it is necessary to test their legality;

"Therefore be it resolved, That this board employ M. H. Sessions as its attorney to defend any suit that may be brought against the county or to bring any suit he may deem best *to test the legality of said taxes*, and if he deem that any of said taxes are illegal he may make such compromise in the matter with the said Company as he may deem best for the interests of the county in the premises and the said M. H. Sessions is hereby authorized

to enter an appearance for the County of Boone, Nebraska, in any suit which may be brought by the said Burlington and Missouri River Railroad Company in Nebraska or by any stockholder thereof, and to take action as directed by said Commissioners, and to waive issuance and service of a subpœna in the case.

"THOMAS T. WILKINSON,
"T. H. BOWMAN, Chairman,
"EDWIN T. BROADBENT,
"Attest: JOHN PETERS, "Co. Com'rs.
"County Clerk."

Having secured this document to be signed, the parties went a step further and secured the signing of another document which comes near accomplishing the purpose for which the railroad company set out with respect to these taxes. This is Exhibit "G" at page 24 of the record as follows:

EXHIBIT "G."

"LINCOLN, Neb., Jan. 30th, 1878.

"Memorandum of an agreement made by and between the Burlington & Missouri River Railroad Company in Nebraska, first party, and the County of Boone, Nebraska, by its Commissioners, of the second part, and the Nebraska Land and Live Stock Company, of the third part.

"Whereas, parties of the first and third parts have this day entered into an agreement and bonds for the performance of certain obligations conditional on the absolute release of the second party *of all illegal taxes* levied upon the lands of the first and third parties, in the County of Boone for the years 1873 and 1877, inclusive;

Now, therefore, the party of the second part hereby agrees, by its commissioners and by its authorized attor-

ney, M. H. Sessions, to enter into the necessary stipulation and to have decree of Court entered up in the Circuit Court of the United States for the district of Nebraska *eradicating the whole of the taxes now charged against the lands of the first and third parties for the above years, all of said taxes having been examined and agreed upon as being illegal and void.*

THOMAS T. WILKINSON, Chair'n.
EDWIN BROADBENT,
T. H. BOWMAN, Com'rs.
M. H. SESSIONS,
Attorney for Boone County.

Attest:
JOHN PETERS,
County Clerk."

While the "whereas" part of the foregoing agreement is the release by the second party of all "*illegal taxes*" levied upon the lands, the agreement is "To enter into the necessary stipulation and have the decree of Court entered up in the Circuit Court of the United States for the District of Nebraska *eradicating the whole of the taxes now charged against the lands of the first (railroad company) and third (Nebraska Land and Live Stock Company, being Adam Smith) parties for the above years, all of said taxes having been examined and agreed upon as being illegal and void.*"

The progress here is rapid; all of these papers were dated January 30th, 1878; the first paper proposes to submit the matter to the court, the second paper, signed within a half hour, recites that all the taxes have been examined and agreed upon as illegal. When the record in this case shows that these tax lists cover thousands of acres of land and proceed-

ings to impose taxes extending over five years, we can easily judge of the truth of the allegation that the taxes had "*all been examined and found illegal*;" and it may be added that the testimony of all three of the Commissioners is that the question of the legality of these taxes had never been examined.

The Commissioners then returned, leaving, as they supposed, with Mr. Sessions as their confidential legal adviser the matter of submitting to the Court the adjustment of the taxes so levied for the purpose of having that Court decree what taxes were legal and what taxes were illegal.

Mr. Marquette, the general attorney for the railroad company then communicated with Mr. Hunnewell to get his authority to bring a suit in the Federal Court in his name *on the ground that the railroad company was going to pay the taxes*, and after getting his permission, prepared his bill declaring said taxes illegal and asking that the same be enjoined and cancelled, wrote a stipulation to have the decree entered at once perpetually enjoining all the taxes, which was signed by Mr. Sessions representing the County, Mr. Marquette representing Mr. Hunnewell, and O. P. Mason, called in for that purpose, representing the railroad company. Either Mr. Sessions or Mr. Mason took these papers to the city of Omaha, filed them in the Circuit Court of the United States and had decree entered according to the stipulation. There was no investigation of the cause upon the part of the Court. All these proceedings were a fraud and

imposition both upon the Court and upon the County of Boone.

At page 85 of the record Mr. Broadbent, one of the Commissioners, a witness, testified that he never knew of signing a paper which authorizes the eradication of these taxes and testified he never would have signed such a paper had he known it, and says:

"Ans. 118—I placed perfect confidence in Mr. Sessions as our attorney and when he called upon us to sign the papers we signed them. We supposed that he was a man that was honorable and right and when he called upon us to sign the papers, we signed the papers."

"Int. 119—Then you signed the papers without reading them or looking at their contents?

"Ans. 119—Yes sir.

At page 87:

"Int. 15—Mr. Broadbent, you intimated that Mr. Sessions, your attorney, did not do right; now in what respect did he do wrong?

"Ans. 15—He done wrong either in writing different from our intention or allowing it to be wrote, and presenting it to the Court.

Mr. Bowman, another of the County Commissioners, at page 108, testifies that he did not knowingly sign any papers providing for eradicating the whole of the taxes charged against the lands in his County. He says he did not read it, but that he thinks Mr. Sessions read it; but that he did not read that part of it last referred to. Mr. Sessions was not paid by the County; to this he testifies himself, but he cannot be

persuaded to testify who did pay him. The County Clerk, Mr. Peters, however, testifies that Mr. Sessions was paid by Mr. Adam Smith, the Railroad Company's coadjutor.

It will thus be seen that Mr. Sessions absolutely betrayed the County of Boone, complainant herein; that he was employed by the parties seeking to secure a cancellation of the taxes; that he was paid by the same parties; that he read falsely the papers to be signed by the Commissioners and procured their signatures through fraud; that he had never examined the assessment or any of the proceedings to impose the taxes in question and yet immediately advised the Commissioners that the taxes were illegal; that being employed in good faith by the County to adjudicate the question of the taxes so as to separate the legal from the illegal, he signed a stipulation to wipe out all the taxes without any investigation. It is impossible to open scarcely a page of this record without alighting upon evidence of this fraud. We therefore confidently maintain that the decree thus obtained should be set aside.

IV.

IF THE PROCEEDINGS WERE NOT VOID FOR FRAUD, THEY WERE VOID FOR WANT OF LEGAL AUTHORITY IN THE BOARD OF COUNTY COMMISSIONERS TO STIPULATE THAT THE DECREE BE ENTERED, CANCELLING AND ENJOINING THE COLLECTION OF THE TAXES.

The Constitution of Nebraska, Sec. 1, Art. IX, entitled "Revenue and Finance," provides:

"The Legislature shall provide such revenue as may be needful by levying a tax by valuation, *so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises*, the value to be ascertained in such manner as the Legislature shall direct."

And section 4 of the same article provides:

"The Legislature shall have no power to release or discharge any county, city, township, town or district, whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for State purposes, or due any municipal corporation; nor shall commutation for such taxes be authorized in any form whatever."

If the Legislature could not ~~reduce~~ release these taxes "in any form whatever," the County, which is a mere creature of the statute and deriving all its power therefrom, could not release, eradicate or commute the taxes in question "in any form whatever."

The law in force at the time of the controversy in question with respect to payment of the taxes was as follows:

"SECTION 1. Session Laws of 1875, page 92. State warrants are receivable for the amount payable into the State Treasury on account of tax levied for general State purposes. County warrants are receivable at the treasury of the proper counties for the amount payable to the County Treasury for general purposes, and city warrants shall be received for city general tax. State, county or city taxes levied for the school fund or sinking fund, shall be paid only in United States treasury notes or their equivalent. State, county or city taxes levied for bridge, penitentiary or other special purposes, shall be paid only in United States treasury notes or their equivalent, or by warrants drawn upon and payable out of the particular fund for the payment of the tax, upon account of which they are tendered. Road and poll tax shall be paid as provided in Section 30."

No taxes could be paid by labor other than land road tax, and if the owner of land elected to work out the road tax, such work must be done under the supervision of the road supervisors, and in the road districts where the land is situate.

Chapter 66 of the general statutes of Nebraska, page 896, provides what property shall be exempt from taxation, which provisions do not include any of the species of property included in the decree sought to be set aside in this action.

The record shows the different levies made, and for what funds; and no money levied for one fund can be converted to another fund.

The Commissioners have no authority over the tax lists in any manner or for any purpose whatever. After the equalization is made, the tax list is made out therefrom by the clerk, and turned over to the treasurer, with the warrant of the board, commanding the collection of the tax therein contained. The treasurer is then charged with the full amount of the taxes charged in the list, and in the collection of the tax his functions are wholly independent of the Commissioners, and he is inhibited by law from receiving from any person a less amount of tax than that charged to him on the list.

The Board of Commissioners is a creature of the statute, and can exercise such powers only as are conferred upon it by the statute.

The Sioux City & Pacific Railroad v. Washington County, 3d Nebraska, p. 30.

In this case the Court, construing the power of the County Commissioners, with respect to the equalization of the taxes, at page 42 says:

"Again, the grant of powers to such officers must be strictly construed, because when acting under special authority, they must act strictly on the conditions under which the authority is given. They can only exercise such powers as are especially granted, or are incidentally necessary for the purpose of carrying into effect such powers, and when the law prescribes the mode which they must pursue in the exercise of these powers, it excludes all other modes of procedure."

Sexson v. Kelly, 3 *Nebraska*, 104.

In the above case, referring to the power of the County Commissioners, at page 107 the Court says:

"The rule of law is well settled; that statutes conferring power upon municipal officers must be strictly construed. And the doctrine that municipal bodies can exercise only such powers as are especially granted them, or such as are necessary to carry into effect the powers expressly granted, is too well established to cite authorities in support of it."

Wood v. Helmer, 10th Nebraska, 65.

In this case, the Court, referring to the constitutional provisions with regard to the release of taxes, says, on page 68:

"It will be seen that by our statute, taxes are made a perpetual lien upon real estate, and that the legislature has no power whatever to release property from the payment of its due proportion of taxes."

Merrick County v. Batty, 10th Nebraska, 179.

In this case, the Court holds that the Commissioners must transact their business at the county seat, and they have no authority whatever to enter into a contract at any other place. With respect to a contract to do certain work on the road, even if that provision applied to the road tax, and road tax only, yet such a contract is absolutely void. Such a contract for work could not be executed by the County Commissioners in any other manner than as provided by law, which requires, among other things, that such contracts must be let to the lowest bidder, and failing to do so, the contract is null and void.

The People v. Commissioners of Buffalo County, 4th Nebraska, 150.

McCann v. Otoe County, 9th Nebraska, 324.

It was claimed by the Railroad Company below that the Board of County Commissioners under the statutes of Nebraska have power to sue and be sued and that the power to sue and be sued carried with it the right to settle and compromise a suit. We need not deny this proposition; what we insist upon here is that the Commissioners had no authority to enter into a contract before a suit was commenced, by the terms of which they agreed that all the taxes of every character levied upon lands in their county, which lands were taxable under the law and which taxes were a legal levy, should be enjoined, released or dischaged. The legislature has no such power. The constitutional mandate is, "*that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises.*"

In *Kelly v. Town of Milan*, 21 Fed. Rep., 842, Mr. Justice Matthews, speaking for the Court said:

"And so we might go through the cases and distinguish them; but it is not necessary, for we have not found one where a municipal corporation has been held to have validated its bonds otherwise void, *by a consent decree declaring the bonds valid.* Individuals *sui juris* may agree to almost anything and bind themselves; but corporations must act within their delegate powers."

Same case 127 U S 138.

The imposition and collection of revenue is one of the most important functions of government. Our

constitution and legislative enactments have wisely and justly directed, in positive terms, that all property shall bear these burdens alike, and inhibits the release or commutation of any tax; and the act of the Commissioners consenting to a decree to release and discharge the taxes in question was without pretense or shadow of authority and in direct violation of the constitution and laws of the State. It was beyond their powers and therefore absolutely void, and the County of Boone is not bound thereby, and the decree so entered should be vacated.

V.

RES ADJUDICATA.

After the decree was entered in the Hunnewell case, one Lorin Clark, a citizen and tax payer of Boone County, filed his bill in equity in the Circuit Court of the United States for the District of Nebraska, against Horatio H. Hunnewell, the Burlington & Missouri River Railroad Company in Nebraska, and the County of Boone, praying that the decree rendered in the Hunnewell case enjoining the taxes, be vacated. The bill is in the record and found at page 42.

The Clarke bill, among other things, contains the following:

"That he is a resident tax payer of Boone County, Nebraska, and is duly authorized by at least one third the tax payers of said County, as well in amount as in number, to bring this bill of complaint as well upon their behalf as his own, they being similarly situated."

To this bill Horatio H. Hunnewell and the Railroad company interposed a general demurrer, Mr. Marquette appearing for the Railroad company and Mr. Woolworth for Hunnewell. The ground of demurrer was that the bill in said cause did not state a case entitling the plaintiff to any relief; First, because the bill showed no interest in Mr. Clark, and no amount was shown to be in controversy so far as he was concerned. Second, That interpleading one third of the tax payers with him made the case no better, and Third, That Clark had made no application to the Board of County Commissioners to bring a suit in their name for the relief sought. The demurrer was submitted upon printed briefs, and the brief of the defendants, the Railroad company and Hunnewell, showing what issues were made upon the bill, is found at page 207 of the record.

Thereafter the Court sustained the demurrer and decreed that the bill be dismissed at the cost of the plaintiff. (Page 41.)

It is now claimed by the defendent, Railroad company, that this was an adjudication of the matters in controversy in this bill, and binding upon the County.

It scarcely needs argument to show that Mr. Clark could not litigate the questions presented in his bill; This, for many other reasons than those set forth in the demurrer of the defendants in their answer; but those reasons are sufficient.

The merits of the case were not considered or passed upon by the Court; the questions raised being matters of jurisdiction and form merely, and such being the case it constitutes no bar to this action.

Griffin v. Seymour, 15 *Iowa*, 32.

Gilman v. Rieves, 10 *Peters, U. S.*, 302.

Mr. Lorin Clark had no right to bring suit to set aside the decree. We concede that a tax payer may bring an action on behalf of himself and all others similarly situated to *prevent* the misuse of corporate powers pecuniarily affecting them; but we claim the law to be that he can bring such suit only to *prevent* or *restrain* abuses.

In *Crampton v. Zabriske*, 101 *U. S.*, 601, the Court, speaking by Mr. Justice Field, says:

"Of the right of resident tax payers to invoke the interposition of a Court of equity, to prevent an illegal disposition of the moneys of the County or the illegal creation of a debt which they, in common with other property holders of the County may otherwise be compelled to pay, there is at this day no serious question; the right has been recognized by the State Courts in numerous cases, and from the nature of the powers exercised by municipal corporation, the great danger of their abuse, and the necessity of prompt action to prevent irremediable injuries, it would seem eminently proper for Courts of equity to interfere upon the application of the tax payers of a County to *prevent* the consummation of a wrong, when the officers of these corporations assume in excess of their powers, to create burdens upon property holders. Certainly

in the absence of legislation restricting the right to interfere in such cases to public officers of the State or County, there would seem to be no substantial reason why a bill by or on behalf of individual tax payers should not be entertained to *prevent* the misuse of corporate power. The Courts may be safely trusted to prevent the abuse of their process in such cases."

This is as far as any of the cases have gone and they limit the doctrine to *preventive* or *restraining* remedies. It will scarcely be claimed that if a County wrongfully pays out money upon an illegal bond or otherwise or illegally alienates the property of the municipality, that a tax payer either upon his own behalf or upon behalf of himself and others, could bring an action to recover the money or to set aside the conveyance, though he or they might have brought an action to *restrain* such illegal alienation and payment. No tax payer as such, on behalf of himself or on behalf of himself and others, can assume to be the champion of the County and on behalf of the municipality institute proceedings to remedy abuses that have already been committed; nor to institute proceedings by mandamus, *quo warranto* or otherwise, to compel the performance of duties on the part of municipal coporate officers. Such proceedings must be instituted by a public officer thereunto duly authorized, or by a private individual as a relator; the suit in such case being instituted in the name of the State.

A tax payer cannot assume to take upon himself the functions of government neglected by the officers thereof. If the rule were otherwise it would confound

all distinctions between public and private rights and remedies and would introduce inextricable confusion. *Norman v. Otoe Co.*, 8 Neb., 21; *Doolittle v. Supervisors*, 18 N. Y., 159; *People v. Field*, 58 N. Y., 491; *Craft v. Jackson Co.* 5 Kan., 518; *Atty. General v. Boston*, 123 Mass., 460; *Oakland v. Carpenter*, 21 Cal., 642; *Albertson v. the State* 9 Neb., 429.

Again—Where a tax payer may bring an action except where the grievance is especial to himself, he must bring it in behalf of himself and *all other tax payers* similarly situated; otherwise an endless number of suits might be brought. The suit of Clark was not brought on behalf of himself and *all other tax payers* similarly situated, but, as he alleges in his bill, about one third of them authorized him to bring the suit.

In Norman v. Otoe Co., 8 Neb., 21, the Court says:

"Tax payers of the proper county may maintain an action for themselves and all other tax payers of the county to restrain the County Commissioners from an illegal exercise of their powers to the injury of such tax payers.

There is no doubt that the case was decided wholly upon the ground that the complainant had no authority and did not show himself qualified to bring the suit; but if upon the face of the record anything is left to conjecture as to what was necessarily involved and decided, there is no estoppel in it.

Russell v. Place, 94 U. S.. 606.

VI.

THE STATUTE OF LIMITATION AND LACHES.

The learned Circuit Judge, who heard the cause below, sustained the complainant herein upon all the foregoing points, but dismissed the bill on the ground of laches, adding to the decree this language:

"This decree was based solely on the ground of laches on the part of complainant." (Page 421).

The bar of the statute of limitations was raised by the demurrer of the defendants to this bill and argued before Judge McCreary then the Circuit Judge, and was by him overruled.

We have heretofore stated that the Board of County Commissioners was composed of three persons, each elected for the term of three years. Commissioner Wilkinson's time expired in January, 1879, and that of Commissioner Broadbent, in January, 1880. They served to the end of their respective terms.

Section 12, of the Compiled Statutes of Nebraska, 1889, at page 84, is as follows:

"Within four years * * * an action for relief on the ground of fraud, but the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud."

"Sec. 16. An action for relief not hereinafter provided for can only be brought within four years after the cause of action shall have accrued."

In the case of *Oaklaud v. Carpentier*, 13 Cal., 240, the Court says:

> "The statute of limitations does not begin to run until after the corporation thus defrauded got out of the hands of the confederates and an opportunity was afforded innocent agents coming to the management of the affairs of the corporation to look into and ascertain the true state of things."

The County will not be presumed to have knowledge of the fraud from the knowledge of the officers committing the fraud.

O'Brien C. v. Brown, 1 *Dill, S. C. R.*, 588.

But the record clearly shows that the Commissioners were imposed upon by the defendant Company in that it employed Mr. Sessions to act for the County, who was paid by Adam Smith who was acting with the Railroad company, having purchased large tracts of its lands, to secure the release of the taxes. The instrument employing Mr. Sessions signed by said Commissioners is to the effect that he was employed to have the matter of the legality of the taxes determined in the court so that it might be known what taxes were legal and what taxes were illegal; that after being so employed he secured the Commissioners to sign an instrument hereinbefore set forth, authorizing him to enter into a stipulation to release the whole of the taxes as illegal; the Commissioners not reading the instrument when read by Mr. Sessions the part with referance to releasing the whole of the taxes was omitted by him in the reading; and

when the Commissioners learned that the decree of Court was entered enjoining the whole of the tax, they supposed that it was after a legal investigation and determination that all of the taxes were judicially found to be illegal.

Commissioner Broadbent said at page 85, when asked whether he knew such language as eradicating the whole of the taxes was in the pager he signed, answers: "No, I never knew it was there."

At page 87 he testifies:

"Int. 19. Now when did you first find out that Mr. Sessions had not done just as you intended he should do, and when did you first speak about it?

"Ans. 19. I never did find out. I have stated that as it appears to me from what I know about it, that is all. I never knew it was presented in Court. I say that if he presented that paper as it was represented to me that he had done, that he had presented that that was not in accordance with our intentions."

Again at page 91:

"Int. 1—Mr. Broadbent, you in your cross-examination, state that you understood that the decree was entered cancelling all the taxes. Now, did you know at that time, when you became aware that there was a decree of the Court eradicating the taxes for those years, that Mr. Sessions had consented to the decree being entered, eradicating all the taxes on the lands for all the years without the Court making any inquiry or examination into their illegality or irregularity?

"Ans. 1—No; I supposed that when I was told that the taxes were all cancelled, I supposed that the Court

had examined and had concluded that they were all illegal and had cancelled them all.''

Commissioner Bowman, after testifying that he did not know that the papers signed by the Commissioners provided for the eradication of the whole of the taxes, and that Mr. Sessions did not read that part of it when he read it over to them, at page 112 further testifies:

"Int. 15—When did you first find out that that part which you now say you did not hear read in that agreement was in it?

"Ans. 15—I didn't know it until within a few days.

"Int. 16— You never knew it until Mr. Miller told you of it, did you?

"Ans. 16—Yes sir. That is, I heard it was before I saw Mr. Miller—before I ever met Mr. Miller.''

He further testifies in the answers immediately following, that he first learned that the provision of eradication of the whole of the taxes was in the agreement from Mr. Cox, the sheriff of the County not long before his deposition was taken.

It was urged below that there were certain public meetings in the County with respect to the matter of the taxes, and that the people had knowledge of what had been done in the premises. Without discussing the legal effects of such testimony, we assert that at every one of these meetings the Railroad Company's officers and those acting in their behalf, lead the people to believe that the matter had been examined and determined by the Court, and in no instance were the people informed that a consent decree had been

entered, releasing the taxes without a judicial inquiry into their legality. (And see page 171.)

Commissioner Wilkinson, at page 180, testifies:

"Int. 7—Did you know at that time that you say you heard Mr. Bollman read the decree, that that decree was entered by the Court without any consideration or examination into the facts as to whether the taxes in Boone County upon the B. & M. lands were legal or illegal?

"Ans. 7—No, I did not. The first knowledge I had about the particulars of the decree being entered was when the Major read his papers.

"Int. 8—Just state when that was?

"Ans. 8—I don't know exactly the date.

"Int. 9—It was in 1884, wasn't it?

"Ans. 9—Yes, it was in 1884."

It will thus be seen that all three of the Commissioners constituting the County Board at the time the decree was entered, had no knowledge until years afterward that Mr. Sessions had proved treacherous to his employment and consented to a decree eradicating the whole of the taxes.

Mr. Touzalin, the Superintendent of the company, at page 200 testifies that the agreements made with the Commissioners required judicial determination of the state of the taxes involved. (And see, also his answer 11 at page 205.)

It was contended below that Mr. Touzalin informed the people of the County of what had been done with respect to the decree; but we call attention to his testimony at page 206, Int. 20, where, when

asked whether he informed the people that the decree referred to was entered by the Court by consent of the County Commissioners, and without any examination or inquiry having been made by the Court as to the legality or illegality of any of the taxes in question, he fails to answer that question, but answers that the agreement marked Exhibit "A" was read over in full at the meeting; this was an absolute evasion of the inquiry made, for Exhibit "A" is the original agreement between Smith and two of the Commissioners, and the agreement to which his attention was called was the one wherein Mr. Sessions was given power to appear in Court and consent to a decree eradicating the whole of the taxes. The fact is that Exhibit "A," which Mr. Touzalin says he read to the meeting after the decree was entered, provides that the question of the legality of the taxes was to be submitted to judicial determination.

Mr. Sessions, the attorney for the County, at page 377 testifies:

"Int. 121—And the decree is in conformity to that stipulation, is it?

"Ans. 121—I so understood it.

"Int. 122—There was no testimony taken or any matter submitted to the Court, was there.

"Ans. 122—No sir."

Under these circumstances, we contend that equity will not permit the Railroad Company, who benefitted by and practiced this deception, to plead laches against

the County in its effort to right this wrong and protect the people, in so short a time after the wrong was discovered. The statute of limitations is not binding upon this Court, but it will adopt its own rule according to the circumstances of the case.

In the case of *Elliott v. Sackett*, 108 U. S., at page 141, the Court speaking by Mr. Justice Blatchford, says:

"Under all the circumstances proved in this case, (*and every case of the kind must depend very largely on its special circumstances*), Elliott had a right to presume that the deed would conform to the written agreement, and was not guilty of such negligence or laches in not observing the provisions of the deed as should preclude him from relief."

In the case at bar, the County Commissioners, lead thereunto by the Railroad Company and Adam Smith, supposed Mr. Sessions was acting in their behalf; and they certainly were not guilty of laches in not knowing that Mr. Sessions read the instrument they signed, omitting the words "to eredicate all the taxes," and that he had proved treacherous to his trust in agreeing with the Company to release all the taxes by a consent decree.

The principles applicable to the case, as we contend are set forth in the opinion of this court, delivered by Mr. Justice Harlan, in *Snell v. Insurance Co.*, 98 U. S., 91; in that case at page 91 the Court say:

"A court of equity could not deny relief under such circumstances without aiding the insurance company to

obtain an unconscionable advantage, through a mistake for which its agents were chiefly responsible. In all such cases there being no laches on the part of the party either in discovering and alleging the mistake or in demanding relief therefore, equity will lay hold of any additional circumstances fully established which will justify its interposition to prevent marked injustice being done."

In the case of *Michoud v. Girod*, 4 How., p. 561, this Court say:

"There is no rule in equity which excludes the consideration of circumstances, and in a case of actual fraud we believe no case can be found in the books in which a court of equity has refused to give relief within the lifetime of either of the parties upon whom the fraud is proved, or within thirty years after it has been discovered or becomes known to the parties whose rights are affected by it."

As was said by Mr. Justice Swayne in the case of *Brown v. County of Buena Vista*, 95 U. S., at p. 160:

"But a court of equity applies the rule of laches according to its own ideas of right and justice; every case is governed chiefly by its own circumstances, whether the time the negligence has subsisted is sufficient to make it effectual was a question to be resolved by the sound discretion of the court. *Sullivan v. Portland and Kennebeck R. R. Co.*, 94 U. S., 806."

In this case none of the reasons of the rule for applying the doctrine of laches attaches. The complainant seeks to restore a liability that justly and legally existed against the defendant Railroad Company, and which was rendered non-enforcible by a decree procured by the wrongful acts of that company.

It was urged below, and will be urged here, that the rights of third parties have intervened, who need the protection of this Court against the application to this case of the doctrine of laches. These persons, it is claimed, are a large number of purchasers of the Railroad Company lands from that Company. A sufficient answer to this contention is, that none of the Railroad Company grantees are compalining in this action, that all of such grantees have warranty deeds from the Railroad Company for their protection, containing covenants of warranty against the lien of all taxes; that if the obligation of the Company to pay these taxes is restored by a vacation of the decree, the claim may be enforced against the Railroad Company without any reference to the lands upon which the taxes were levied; and finally that under the circumstances of this case, the Railroad Company by its own wrongful acts producing the results, is estopped from claiming for itself the benefit of the doctrine of laches.

As the Court said in the case of *Snell v. Insurance Company*:

"A court of equity could not deny relief under such circumstances, without aiding the Insurance Company to obtain an unconscionable advantage through a mistake for which its agents were chiefly responsible."

The unconscionable advantage sought to be taken by the Railroad Company here, is claimed through actual fraud of its agents in securing the release of the taxes.

And again, the reasonable rule is that laches shall not be imputed to the State or people for a failure on the part of its officers in the performance of their duty.

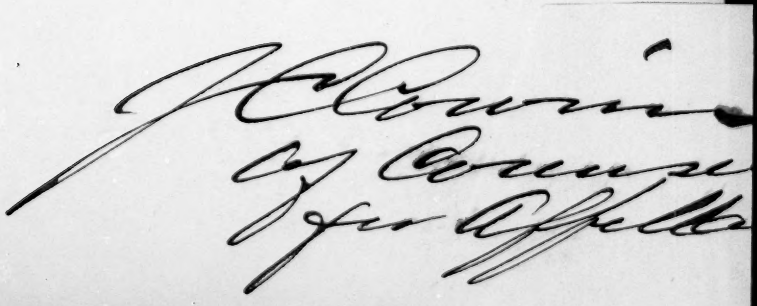
Looney v. Hughes, 26 *Wend.*, 514.
United States v. Kirkpatrick, 9 *Wheat.*, 720.
Same v. Van Zandt, 11 *Id.*, 184.
Same v. Nicoll, 12 Id., 505.
Dox v. Postmaster General, 1 Pet., 325.

We respectfully submit, therefore, that the Court below erred in holding the County of Boone, the complainant, guilty of laches under the circumstances of this case, as shown by the record, and dismissing its bill; that the decree should be reversed and the County of Boone restored to the right of collecting from the Railroad Company, defendant, its just share of the burden of taxation upon lands which were a gift to it from the Government, and thus executing that benign provision of the Constitution of Nebraska, "that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises."

Respectfully submitted,

J. C. COWIN,

Of Counsel for Complainant.



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No. 297.

COUNTY OF BOONE V. B. & M. R. R. R. CO.

APPELLEES.

UNITED STATES OF AMERICA

In the Supreme Court.

OCTOBER TERM, 1890.

THE COUNTY OF BOONE,
Appellant,

v.

THE BURLINGTON & MISSOURI RIVER RAILROAD IN NEBRASKA AND HORATIO HUNNEWELL,
Appellees,

BRIEF OF APPELLEES.

T. M. MARQUETT,
Solicitor for Defendant.

STATE JOURNAL CO., Publishers, Lincoln, Neb.

IN THE

SUPREME COURT OF THE UNITED STATES.

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v.
THE BURLINGTON & MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA AND HORATIO HUNNEWELL, *Appellees.*

BRIEF OF APPELLEES.

STATEMENT OF CASE.

This case arises upon a bill of complaint by the county of Boone, complainant, in which it alleges that a certain decree rendered in the circuit court of the United States in and for the district of Nebraska on March 8, 1878, was obtained by fraud. Said decree was one which had found that certain taxes levied upon certain lands then belonging to the railroad company were illegal and void, and perpetually enjoining and restraining their collection, and removing the lien from the land of this company in said county; and the prayer of this bill is that said decree declaring said taxes illegal and void, and perpetually enjoining and restraining the collection of them, and all of them, might, for the reason and under the circumstances, be set aside by this

honorable court and declared to be fraudulent and void, and that said taxes, and all of them, may be examined by the court and declared valid. The fraud set forth in the said bill is that the commissioners of Boone county and the county clerk thereof, went at the special instance and request of the said railroad company, to the city of Lincoln on the 30th of January, 1878, and, pretending to act as a board of county commissioners for said county, met with certain agents, attorneys, and officers of said railroad company, and Adam Smith, at the time a citizen of Chicago, and there confederating together for the purpose of defrauding the said Boone county, undertook fraudulently and without any authority of law, to enter into a certain pretended stipulation or agreement with said commissioners to sign and deliver the same, agreeing to a memorandum alleging that there was no warrant for issuing the documents there; said documents appear in the record on pages 57 and 58.

2d. The fraud consisted in the fact that the railroad company and said Smith agreed to pay, and did pay, all the expenses of said commissioners to Boone county to said city of Lincoln and return, and all their expenses at said city.

3d. The third allegation of fraud is that said company and said Smith fraudulently adduced said commissioners to pretend to employ N. H. Sessions as attorney for said county, by agreement that said Smith and said company would pay for his services, and that said Sessions was so employed by said railroad company and by said Smith as an attorney to act for them and in their interest, and against the interest of said county, and that said Sessions acted for said company and in its interest in pursuance of said illegal arrangement.

4th. That in pursuance of said fraudulent arrangement the said cause was commenced in a clandestine and fraudulent manner. That said Sessions brought the said bill to Omaha, together with a stipulation and decree, prepared to enter and file the same in the court, paying the fees therefrom and endeavoring to have the said decree entered the same day the bill was filed, for the purpose of preventing any knowledge thereof to come to the ears of the taxpayers of said county

until after said decree had been entered. Then alleges that the decree in question was procured by fraud.

It is admitted in the answer that a decree was entered in the case of Hunnewell, stockholder, v. County Commissioners of Boone County perpetually enjoining the taxes for the years set up in the petition, and removing the cloud and lien from the land set forth; but all fraud is denied in fact. With the exception of the above admission, the petition is denied *in toto*, and the following other defenses are put up.

1st. That the action was barred by the statutes of limitations in Nebraska.

2d. Laches.

3d. That the question of the validity of said judgment had been adjudicated by the taxpayers of Boone County since its entry, and therefore the question raised in this suit is *res adjudicata*.

The facts which led up to this decree are as follows:

1st. That about the only real estate and lands that were taxable in Boone County for the years 1873, and running up to and including 1877, were the lands belonging to the respondent, the B. & M. Railroad Company, and that they owned, in round numbers, 180,000 acres. (See printed record, page —.) This amount is clearly shown by the tax lists as certified to by the county clerk for 1873 and 1874, with oral evidence, which shows that no lands, or very few, were entered after that time up to 1877.

2d. Further appears that the railroad had the odd numbered sections of land, and that the even numbered sections of land were open to homestead entry, and very few of them taken; only about 5,000 acres on the tax list, except the company's lands; the company paid about all the taxes that were paid. The taxes for the first two years, 1873 and 1874, were enjoined; a suit was brought to enjoin the same. This land was indemnity land deeded to the railroad company for odd numbered sections which had been taken by home-

steaders and otherwise along its line at the time it was definitely located; that in the year 1875 the United States government commenced a suit against the railroad company to set aside its patents for all lands in Boone county, and that suit was pending at the time the judgment in question was entered, and for more than a year afterward, and decided in 98 U. S., page 334. That after the commencement of this suit the company, not knowing whether it had any title or not, withdrew its injunction suit without prejudice. This was done probably more on account of the fact that they believed the taxes to be illegally assessed and levied as well as on account that they might not have any title. (See printed record, page ——.)

3d. In July, 1877, one Adam Smith, who had been dealing in lands along the Illinois Central with great success, made an offer to the company to buy outright 65,000 acres of their lands in Boone county, with the right to buy that many more acres. The company agreed to sell, providing Smith would pay the taxes; hold them harmless from the taxes.

4th. On this proposition Smith went to the board of commissioners of Boone county, and on the 18th of July, 1887, made an agreement with them that he would do work out upon the roads and building bridges to the amount of some $20,000 worth, if they, in some lawful way, would remove what they supposed to be the illegal taxes from the lands. (See printed record, page 55.)

5th. Having made this contract with the board of county commissioners, he returned and made a contract with the railroad company (see printed record, page 146) on the 28th of July, which, in substance, was that the railroad company sold to Smith outright 65,000 acres of land at an average of $1.00 per acre, this being 30 per cent less than their cash value, or what they were selling to others. The 30 per cent represents the price that the railroad paid to have the illegal taxes removed as liens from the land. Likewise, the contract was that he was to buy 65,000 acres more of the lands.

6th. The contract said that the party of the second part would be

entitled to prices upon his second selection of 65,000 acres of 91 per cent of the cost price of the 1st of August, 1877. The 91 and 73 per cent represent the amounts that these lands were sold for less than they would otherwise have been sold for had these tax liens not been upon them.

7th. Smith holding the contract for 130,000 of the 180,000 was to pay all the taxes on the 180,000 acres or hold the company harmless from them. Nothing is done until the 30th of January; they then are fully aware that the legal title of the lands was in the railroad. The board of county commissioners and Adam Smith, the two parties under our view the most interested in having the tax liens removed, came to Lincoln and drew up certain papers which appear in printed record, pages 55, 56, 57, 58, and 59.

8th. Nothing was done under this arrangement, but on the 4th of February, 1878, the following resolution was passed by the county board:

"That whereas the taxes on the lands of the B. & M. R. R. R. Co. in Nebraska, in Boone county, both state, county and school taxes are unpaid for the years 1873, 1874, 1875, 1876, and 1877;

"And whereas, the said company disputes the legality of said taxes and it is necessary to test their legality, therefore be it

"*Resolved*, That this board employ M. H. Sessions as its attorney to defend any suit that may be brought against the county, or to bring any suit he may deem best to test the legality of said taxes; and if he deem that any of said taxes are illegal he may make such compromise in the matter with the said company as he may deem best for the interest of the county in the premises; and the said M. H. Sessions is hereby authorized to enter an appearance for the county of Boone, Nebraska, in any suit which may be brought by the said Burlington and Missouri River Railroad Company in Nebraska, or by any stockholder thereof, and to take action as directed by said commissioners, and to waive issuance and service of a subpœna in the case."

Under that resolution M. H. Sessions, who was appointed attorney by the county of Boone, met with the attorney of Hunnewell, who represented the stockholders of the railroad company, and they went over, spending considerable time, all the papers to determine what were legal and what were illegal taxes, and a bill was drawn up embodying the facts as agreed to by the attorneys, and by stipulation Sessions made, as he was authorized to do, an appearance for Boone county, and the papers were submitted to the court by the stockholder's attorney, who asked that a decree be entered in accordance with the facts set forth in the said petition. There was no objection to its entry, and it was stipulated that upon working out $10,000 or more taxes that the rest should be perpetually enjoined and the lien removed. That at the time these papers were submitted and at the time a decree was asked, taxpayers represented by Loren Clark, one of the taxpayers, interposed an objection to the decree being entered, and he was given thirty days to make a showing why decree should be set aside if wrongfully entered.

2d. Prior to this time the county had offered to take fifteen per cent of the taxes, admitting that all but fifteen per cent were illegal. These were the circumstances and facts which led up to the entry of the decree as found on page 166 of the printed record.

FRAUD.

The plaintiff's theory is:

1. That the entry of the judgment, the agreement with Adam Smith, and the acts of the attorney, Sessions, were all clandestine and fraudulent.

2. That the taxes of $70,000 were all lawful taxes, and that the attorney with the county and Adam Smith and the railroad company, all conspiring together, hired Sessions for the purpose of entering a fraudulent decree, declaring the taxes void when they were legal; and the fraud, the result of this act, as alleged in their petition, is as follows: That if the decree is allowed to stand in force, then the lands of

all other taxpayers in said county will be holden for the payment and satisfaction of ~~other~~ this indebtedness, and will have to pay large and unjust taxes for the payment of the same.

As against this theory the respondents submit the following:

1. The evidence shows that the acts of the commissioners in making the contract or compromise with Adam Smith were public acts, in which they called together the taxpayers of Boone county and made the contract with their assent; and the principal taxpayer that afterward objected to it and brought a bill to set aside the judgment was one of the principal men in having the contract made, and as will appear, printed record 56, his name is put there as a witness: Loren Clark.

2. That the board of county commissioners, by their own fraudulent acts, conspiring with the assessors, had caused the land of the company to be assessed at such enormous prices, and to add to this, a large part of their levy was unauthorized by law, so that in many instances the taxes on land were greater than its value; while these illegal acts made the ~~taxpayer~~ other an enormous one of $70,000, yet they had agreed to take fifteen per cent of it; so that the agreement with Adam Smith was a better compromise than the one they had agreed to make with the railroad company.

3. That under the laws of Nebraska which made taxes levied a perpetual lien, and by the law which only authorized their collection from the land itself, and where in all private sales of the same they could only be sold for all of the taxes that appeared on the books against them, and not for one year or a part of it, these illegal taxes stood in the way of the collection of any legal tax that might be levied, and hence the county was as much interested in having them removed as either the railroad company or Adam Smith.

4. All that was done by them after their agreement of July, 1877, was to employ Sessions as an attorney and agreed to his acts for the purpose of getting better terms of compromise than the one they had agreed upon.

5. The record shows that beside the railroad land, which amounted in round numbers to 181,000 acres, there was only a very small part of the real estate of the county that was taxable; not to exceed from 5,000 to 8,000 acres. As the fraud is alleged that it would increase the taxes on the land and make the landowners pay more taxes, it simply amounts to this: It took the illegal taxes off of the railroad lands with the privilege of putting any amount of legal taxes upon them, and that the result of entering the decree instead of being *damaged, was of great benefit to the county.*

6. The result of the entering of the decree in question was beneficial to the county. It in no way operated as a fraud.

That Adam Smith went to Boone county and met the board of commissioners of said county, and on the 18th of July, 1877, made an agreement with them that he would work out upon the roads and in building bridges, taxes to the amount of $20,000 worth, and the agreement assumes that that is all the legal taxes there are, and probably more than the amount of lawful taxes; the rest being illegal, they were in some lawful manner to be canceled and the liens of the same declared void. (See printed record, page 5.)

I.

The evidence shows no fraud but good faith.

On page 283, John Peters' evidence, who was county clerk. He says, on page 381, in reference to what the county did: Well, in the summer of ~~1887~~ 1877 Adam Smith had called at my office and made a general inquiry relative to the B. & M. lands. He then went to see the county commissioners and came back and requested me to call a meeting of the board of county commissioners; the county commissioners met with Adam Smith and such few people as there were here in town, a few around in the country near by, and talked the proposition over that he finally submitted to the commissioners at that time. The county commissioners remained in session two or three days before taking action on this proposition; they felt that it was a matter

that concerned the county, that was of vital importance to the county, and did not want to act until they obtained the consent of the prominent men of the county; they sent out and called the people together, as many as they could get, in the court house. After they got there the proposition of Adam Smith was then read to the county commissioners, after the people were together there in the court house; I forget the number, but there was quite a number of people that were sent for and talked the matter over. After the contract was read to the county commissioners the matter was discussed by the board with the people that were then assembled—fully discussed the matter; it was the unanimous choice of the board, and also of all the people in the court house, to enter into the agreement. (This evidence appears on page 384 of the printed record). They say they did consent at different times to settle with the railroad company, these taxes, and instructed their county treasurer to correspond with the railroad company, and offered to take a certain per cent.

Q. Do you know what that per cent was?

A. Mr. Bowman, the county treasurer, was empowered by the county to settle with the railroad company for $8,000 in lieu of all the taxes, which the company refused to do, claiming that they were not justly entitled to pay these taxes; the per cent would be at that time about fifteen or twenty per cent; I don't remember just exactly what it was. The county entered suit against the railroad company for several years and could not collect the taxes.

You will note they get more in value than they offered to take in money.

But it is contended by the complainant that all of these taxes were legal, lawful taxes, and that therefore the county board, or their attorney, had no right to consent to anything. Whilst we do not believe that the question of the legality of the taxes ought to be litigated in this, but only the fraud in procuring the decree is a matter of litigation, yet for the sake of argument we will look into the validity of the tax.

ASSESSMENT.

There are two objections to the assessment of the taxes:

1st. The law requires a certain *prescribed oath* of the assessor to be certified to by the officer *administering it, which oath must be attached to the assessment roll,* and which was essential in order to give the board *power to tax.* There was no *such assessment roll.*

2d. The assessors never made any assessment; never went upon the land, but simply followed the instruction given them by the county commissioners to tax land worth from twenty-five cents to a dollar and a quarter, at three dollars an acre or thereabouts.

II.

1st. As to the assessment rolls for the years 1874 and 1873, the entire assessment rolls of the county is put in evidence (pages 157 and 165), where it shows that there were no such oaths attached.

For 1875, 1876, and 1877 there is no proof that any assessment oaths were attached to the returns for any year, unless it is for the year 1876, *and that is merely verbal.* It is true, on page 341 of record the county clerk certifies to something of the kind, but in his evidence under objection he swears as follows (see page 404 of the record):

Q. What are these? (Here witness is handed a package of papers.)

A. They are the oaths of assessors.

Q. For what year?

A. Well, these would appear to be for the year 1877.

Q. Is there in that package an oath of each assessor for Boone county in the year 1877?

A. Well, I couldn't answer that until I would know how many assessors we had at that time.

Q. What are those papers, and when was that oath taken?

A. From the looks of these papers they were taken the 2d day of April, 1877.

He then goes through and says that on the 2d day of April, 1877, the oaths were sworn to. The bundle of papers spoken of are the oaths of assessors not attached to the assessment rolls at all as required.

Q. Now, Mr. Peters, these oaths were taken and subscribed on the day they are dated, by the parties, and were made to accompany their reports as assessors for that year, is it not a fact?

A. I presume they were; that is my recollection; I don't remember now, but then it would naturally appear so.

Q. They are retained by you in your office?

Q. Now take the other papers; what are these papers that you have there?

A. These seem to be the *assessment* of different precincts for the year 1876, assessments of real estate of Boone county.

Q. Are there any oaths of assessors attached to these?

A. There appear to be.

Q. Whose are the oaths?

And then follows the list. He says, answer 24, the next one is the assessment of Douglas precinct, sworn to by Hubert Reed.

Q. He was assessor, was he?

A. Yes, sir.

The next one is Shell Creek precinct, sworn to by Furor, assessor, and so on.

It would seem to appear, then, by the evidence of the clerk, on pages 404 and 405 of the record, that the only year that the assessment rolls had the oaths attached, as required, was 1876, and this had

been under the objection as found on page , objected to as incompetent, under the objections is not rebuttal, incompetent, and irrelevant. All of this appears, yet taking the oral evidence of what it shows, and you only have the one year, which shows that the assessment rolls were attached to, is that was objected to as being incompetent and not the best evidence. The court can see at once that it is not. The assessment rolls for the years 1873 and 1874 are given in full just as they appear; hence, there is no competent evidence in this record to show that a single oath of the assessor, such as required by law, was ever attached to them. There were no oaths could be found to introduce in evidence for the year 1875, *attached or detached, so you will see that on page 409*, the agreement of is only as to 1876 and 1877.

In the Statutes of Nebraska, 1873, and in force at the time the assessments were made, the requirements were (section 12 of the revenue act, on page 899): "The assessors shall take and subscribe an oath, to be certified to by the officer administering, and attached to the assessment roll, which oath is to be in substance as follows: (Giving oath.) In the October term of the supreme court of the state of Nebraska, in the case of Morrill v. Taylor, 6 Neb., 236, on page 241, the court say: "The important and perhaps controlling question raised by the pleadings and facts as admitted in the bill of exceptions, is, whether the oath of the assessor certified by the officer administering it and *attached to the assessment roll* is the essential perquisite to the exercise of any power or to any proceeding in the taxation of property." The court say in answer: "The assessment is the official estimate of the value of the property subject to taxation, and constitutes the basis of apportionment. Without it no apportionment can be made, and without it all subsequent proceedings to subject the property of the citizen to taxation can have no support, and must be treated as mere nullities. It is said that the law never presumes the existence of jurisdictional facts; they must, however, exist before any *subsequent step can be taken in the taxation of property.*"

ASSESSED VALUE.

2. On the 31st of January, ~~1887~~ 1873, at a meeting of the board of county commissioners, the following instruction was given to the assessors; the tax list was then taken up and the assessors directed to conform to the following rates: Prairie lands, from $3 to $4 per acre. On this see page 12 of the printed record. On page 13 the following levy was made: County tax levied by the commissioners as follows: County general fund, 6 mills; county sinking fund, 21½ mills; county land road, 4 per quarter section, and special bridge, 2½ mills. Now in the next year the instruction was as follows: The tax list was taken up for the year 1874, February, 1874, and the assessors directed to conform to the following rates: Prairie lands assessed at from $1.25 to $4 per acre. It is true that in 1875 and 1876 there were no direct instructions given to the assessors, but they evidently knew what was wanted. The taxes raised by assessment in 1873 were as follows..... $15,663 00
Subtract for land road levy by the quarter section, $4 per 160 acres 4,508 07

And you have by assessed value..... $11,154 93

Now the county levy for 1873, as found on page 13, in Exhibit A to the bill of complaint in this case, is as follows: County general fund, 6 mills; county sinking fund, 21½ mills; county landroad tax, $4 per quarter section; county special bridge tax, 2½ mills. The county levy then is 30 mills. In 1875 the county tax general fund is 6 mills on the dollar, special bridge 10 mills on the dollar, land road tax 6 mills on the dollar. The levies then for 1873 were 30 mills on the dollar; in 1875 was 22 mills on the dollar; but it does not appear that any levy was made for school taxes in 1875. Deduct the tax for the school district from the amount raised for that year, which was..... $10,417 57
School tax 958 23

That would leave raised by assessment..... $9,459 35

So you see the assessment must have been as high as or higher than for 1875 than 1873; anyway the assessment is much higher than the cash value, which one of the witnesses swears for 1875 was worth nothing.

On page 389 of the brief, John Peters testified:

Q. What was the fair cash value of these lands in that year?

A. At that time there being so much vacant government land in the county lands for sale, really there was no value fixed upon it; there was no price that you could fix for them in the county. * * * The very best lands were not worth more than government prices, which was a dollar and a quarter an acre, the very best land. The poorest land would not bring more than twenty-five cents an acre.

Q. Were you acquainted with the lands in 1874?

A. Yes, sir.

Q. What was their fair cash value?

A. The same as in 1873; don't think any difference.

Q. Were you acquainted with them in 1875?

A. Yes, sir. Well, I don't think there could be much difference even in that year; grasshoppers came along about that time and land was not worth anything.

Q. Were you acquainted with the lands in 1876?

A. I was; well, at that time we had begun to receive a little bigger emigration into the county; these government lands were being, the best of them, taken, and the B. & M. Railroad lands, at that time, probably would have sold from twenty-five cents an acre—some of it not worth that to-day—twenty-five cents an acre to about a dollar and a half.

Q. What was their fair value in 1877?

A. About the same as in 1876.

There is other evidence, but none that puts it any better than this.

This evidence, undisputed, shows that by the arbitrary dictation of the county commissioners and assessors, acting together, that for 1873 none of the land was assessed at not less than double its real value, and some of it at twelve times its real value, and for the year 1874 there is none of it assessed for less than a dollar and a quarter.

On page 185 of the printed record, the evidence of Manley B. Boardman:

Q. Were you acquainted with the valne of these lands?

A. Well, as I said before, there was not any value on land here at that time, because people could get homesteads from Uncle Sam for nothing; well, it cost them about $14, or something in that neighborhood, to get lands, and there were no market values on lands at that time.

You will notice in the tax list of 1873 and 1874, pages ____ printed record, that almost all of the land is odd numbered sections. There is only in 1874 about 5,000 that is not odd numbered sections. These lists show all the taxable land in the county, and on their face show that all the even numbered sections in that county, except the 5,000, are open to homestead; that is, men can get them by living on them. Now, this fact was patent to the county commissioners and assessors when they put a rate of from two and a half to three dollars an acre on land that lay beside of land that could be got for nothing. These facts, better than witnesses, show the fraudulent assessment of this land.

But it is said that the proper way to have done was to go before the board of equalization and have shown that these prices and these assessments; in some years this was done, and the records show. For the year 1875, it is claimed on page 62, and it is claimed there that they placed the assessment of the B. & M. lands at the price. On page 60, it is alleged that the assessors reduced a portion of the assessment on their poor lands to compare with their prices; but there is no record; I looked for it and I suppose my friends did; there is nothing to show that this was ever done; but on the coutrary it was

charged up on the assessment which was introduced. Of course, if there had been a record sh wing it carried out on the books, it would have easily shown. In 1875, the same demand was made; but they never acted upon it. (Page 62.) That was the year in which the assessment was probably higher than any other year. As we have seen, when presented, they simply adjourned without doing anything. In 1867, they simply refused to do anything; but say that the cash price as put in by Mr. Touzalin was a tissue of misrepresentation, and in 1877 they repel the charges; but it was the county commissioners, the board of equalization conspiring with the assessors, that put this high value upon the land; put the value of an acre upon lands lying besides others that could be got as homesteads by living on *them for nothing*, and of course nothing could be expected of them except that they would adjourn *without doing anything, or would maintain the high prices that they had demanded to be put upon them.*

In the case of Waller v. Hughes, supreme court of Arizona, 11 Pac. Rep., 122, the allegations of the assessment there are these: "That said Stephens arbitrarily listed each and all of said ninety-four mining claims at the sum of $500, without reference or regard to the actual value of said mining claims, and without any knowledge of the real value thereof. The plaintiff avers and charges that in listing property for taxation, and assessing and levying upon the same, said assessor, and the said board of equalization, and the said board of supervisors unlawfully listed and assessed all mining claims in said county.

The court say, on page 127: "It is too plain for discussion, that no such assessment can be upheld; it violates every rule upon which taxation proceeds, and leaves everything to depend upon the arbitrary will of the assessing officer. The facts stated show not an assessment but an arbitrary exaction. In his admirable work on taxation, Judge Cooley says: "Taxes by valuation cannot be apportioned without it (assessment); moreover it is the first step in the proceedings against individual subjects of taxation, and is the foundation of all which

follows it. Without the assessment or law they have no support and are nullities. The law requires the assessors to ascertain by diligent inquiry and examination of property subject to taxation; this determines the full cash value of it." Clearly nothing of the kind was attempted here.

Walters v. LePier, 40 Mich., 624.
Dixon v. Reynolds, 48 Mich., 158.

III.

The levies were unlawful.

SINKING FUND TAXES.

In the case of the U. P. Railroad v. Buffalo county, 9th Nebraska, 449. In that case the petition alleged that during the years 1876 and 1877, the county commissioners of said county levied a sinking fund tax. The court held a sinking fund tax is a tax raised to be applied to the payment of the interest and principal of a public loan, and cannot under the statute be levied for the payment of the *floating indebtedness.*

Sedgwick ~~v.~~ on Const. Constitution, p 536.
Williams v. Biddleman, 7 Nev., 68.

THE SINKING FUND TO PAY COUNTY ~~FUNDS~~ BONDS,

Is also unconstitutional and refunded by a special act, under the constitution then existing, to-wit, 1875, which says (sec. 1, art. 8):

"The legislature should pass no special act conferring corporate powers, and the court say this was an act authorizing school district No. 56, of Richardson county, to issue bonds for the purpose of erecting a school building; procuring a site therefor. They hold that it does not apply to school districts generally, but only to one, and therefore it is special:

See Clegg v. School District, 8 Neb., p. 178.
Williams v. Biddleman, 7 Nev., 68.
Atkinson v. Marietta R. R. Co., 15 O. St., 24.
State v. Cincinnati, 20 O. St., 18.
State v. Judges, 21 O. St., 1.
Kelly v. State, 6 O. St., 269.

SCHOOL BOND TAX.

The legislature passed an act February 25, 1875, entitled "An act to amend an act" to provide for the registration of precinct, township, and school district bonds, making it the duty of the county commissioners to levy the necessary tax to meet the liability incurred by said bonds, is in conflict with sec. 19, art. 2, of the Const. of 1867, which declares that no bill shall contain more than one subject, holding that the levy was unlawful.

See B. & M. Railroad Company v. The Board of County Commissioners of Saunders County, 9 Neb., p. 507.

The levy in 1873 (see the printed record 13), of the 30 mills levied for county purposes, the following is illegal: County sinking fund, 21½ mills, and special bridge 2½ mills—24 mills.

In 1874 the 2½ mills for sinking fund on new levy was unlawful.

In 1875 (see page 15), special bridge 10, land road 6, are both illegal, no law; of the 22 mills, 16 are illegal.

Of the levy of '76 (page 16), state special bridge 4, state land road 5, state sinking fund for county bonds 16½, are illegal, together with the school district bond tax.

Of the levies of '77, 9 mills sinking fund, county bridge 5 mills. Out of the 24 mills, 14 are illegal; held so by the supreme court.

We might go further. For instance, the amount in 1873 raised by assessment was $11,154.93; but that assessment was from three to

twelve times as much as it ought to be. Say, for instance, it was four times as high; four into $11,154.93 would reduce the taxation to $2,788.73; but all other real estate in the state is assessed at from one-third to one-fourth less than its value, and we have $929.57, that much legal tax. It simply shows to what a small amount it dwindles under a fair assessment as other property is assessed.

But further, the several or most of them are illegal; hence, at best, the lawful tax is very small.

LEVY OF TAXES.

In the levies of taxes for the years 1873 and 1874 there was levied the following tax: Land road tax, $4 per quarter section. (See printed record, pages 13 and 14.) This is probably the only tax that was lawful. The statutes of Nebraska of 1873, on page 908, was a statute under which most of the taxes in question were levied, which read as follows: "For ordinary county revenue, including support of the poor, not more than six mills on the dollar, and a land tax at any rate not exceeding $4 to the quarter section, to be paid in money or in labor at the rate of $2 per day, at the option of the person so taxed." The amount of that tax is as follows, which was only levied for the two years: $9,521. This statute was amended in 1875, but no additional power to levy was given. (See Laws of Nebraska, 1875, p. 91.)

IV.

These illegal taxes stood in the way of *the collection of lawful taxes.*

The law was at that time, see sec. 34, Gen. Stat. of Neb., 909: "A list of all taxable lands in the county in numerical order, commencing with the lowest numbered sections in the lowest numbered township in the lowest numbered range in the county, and ending with the highest numbered section, township, and range, and the names of the persons or parties in whose names the subdivision was listed opposite each subdivision on the margin or in the column pro-

vided for that purpose, with the valuation of each tract, and the several species of taxes and the total, the valuation of each tract. Taxes to be assessed at cash value. (Sec. 57, p. 918.)

Further, land shall be sold as follows: The person who offers to pay the amount due on the smallest government subdivision of land or the smallest portion of the same, is to be considered the highest bidder, and when such portion constitutes a half or more of the parcel, it is to be taken from the east side thereof.

Taxes are to be assessed at their cash value, and sec. 51 is as follows: "Taxes upon real property are hereby made a perpetual lien thereupon, commencing on the first day of March of the current year, against all persons and bodies corporate, except the United States and this state."

In Nebraska the assessor is bound to assess each tract of land separately, and the lien on each tract of land is for the taxes assessed against such tract only, and no matter whether several tracts lying side by side are owned by the same person, each separate tract must pay its own taxes. The lien does not stand upon the same footing as *ordinary incumbrances*, but attaches itself to the *res* without regard to *individual ownership*. It is the property that must pay the taxes, and it is on the property alone that you can enforce the taxes, and not against the owner. The law further provides as follows, which law was in force at the time these taxes were levied and enjoined, to-wit (Laws of Nebraska, 1875, page 93):

"SECTION 1. Whenever it shall appear to the county commissioners of any county, that any tract of land or town or city lot in such county is of less value than the amount of taxes due upon it, it shall be their duty, at any meeting after said land or lot shall have been offered for sale and not sold for want of bidders, to fix a minimum price for the same, and certify the price so fixed to the county treasurer, and such land and lot shall be sold by said treasurer as other lands and lots are sold at 'private sale,' at not less than said minimum price, irrespective of the amount of taxes due upon it; and

such sale shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes or penalty which may remain after applying for which it was held thereon.

"SEC. 2. All land and lots so sold shall be subject to redemption, and the purchaser thereof shall acquire title thereto in the same manner as other lands sold at tax sale in this state."

LIEN FOR TAXES.

In Nebraska the lien for taxes on each tract of land is for the taxes assessed against such tract only.

2d Ed. Cooley on Taxation, 445, note 3.
Edmunson v. Galveston, 53 Texas, 157.
State v. Baker, 49 Texas, 773.

2d. This lien on each piece of land does not stand on the same footing with an ordinary incumbrance, but attaches itself to the *res without regard to individual ownership, as if enforced by sale of the land, the purchaser will take a valid and unimpeachable title.*

Ostenburg v. Union Trust Co., 91 U. S., 424.
Paulson v. Rule, 49 Iowa, 576.
Perker v. Baxter, 2 Grey, 185.

By the laws of Nebraska, all of the taxes for the five years being due, the state treasurer could not sell them unless he sold for all the delinquent taxes. In the case of McGaverick v. Pillack, 13 Neb., 537, the court say: "It appears that the sale was made for the taxes of 1872 alone, while those of 1871 and 1873 were at the same time delinquent. The treasurer was not authorized to sell the land except for all the taxes; those delinquent, together with interest, penalty, and costs.

State v. Helmer, 10 Neb., 25.
Tolinson v. Small, 13 Neb., 212.

And for this last reason the deed subsequenty made to cure the defects of the first one is also void.

I.

THE ONLY LEGAL TAX WAS THE SAID LAND ROAD TAX.

By summing up the assessment roll, as found upon printed pages 149, 150, 151, 152, 153, 154, 155, 156, and 157, for 1873, we have 180,325.58 acres; taxes at $1 per 160 acres on that amount will come to $4,508; the land road tax levied per acre for the two years, 1873 and 1874, would amount to $9,516. This amount the company, or anyone that was to pay the taxes, had a right to work out, and of course *has a right to make a contract to work them out.*

In the case of Hart v. Henderson, 17 Mich., 219, which was a case where the legality of the following taxes was at issue on land State tax, $1.33; county tax, $6.93; city tax, $3.42; highway tax, 45 cents; school tax, $3.70; bridge tax, $4.56; ward tax, $1.80, amounting in all to $22.19. They say "Taxes for which the sale was made amounting to $22.19, of which assessments amounting to $7.57 were conceded by the parties on the trial to have been illegally assessed." The court say: "The finding did not show that any taxes were legal; but it did show affirmatively that more than a third of them were illegal. Under these circumstances there was nothing to show that Hart's land was legally chargeable with anything, and no judgment, therefore, should have been rendered against him." The court further say, on page 221: "Nothing is tax simply because of being *called* so. But any proceeding by which a man's property is to be taken from him on a claim which has no other basis than a naked declaration of the legislature that it shall constitute a demand against him, is unconstitutional and void, as not being according to the law of the *land*, but on the other hand wholly *unwarranted by legal principles.*"

FRAUD.

The gist of the fraud and the only allegation of a fact is, that the railroad company and Smith paid the expenses of the county commis-

sioners when they went to Lincoln, and that they also paid Sessions' attorney fees, and that Sessions acted for the company instead of the county; but eight months before Sessions was employed they had made the contract which appears in printed record on page 55. They had been trying at that time for years to collect the tax, and never collected any of them. They made a contract and it was made a part of the records of the county. They employed Sessions and he tried to do better for them than that; he tried to get something in addition to what they had agreed to.

On page 99 of printed record, Wilkinson, one of their own witnesses, says: "After all the business was performed, and I think while we were up at our hotel taking lunch prior to going to the depot to take the train, Mr. Smith spoke about our expenses; we told him that we had instructed Mr. Peters to keep an account of our expenses and we expected to charge the county for it; that we were acting on behalf of the county and at their expense, and Mr. Smith said that for some years I will have to pay the largest portion of these taxes and that I would just as soon pay your expenses as pay it into the county treasury." We thought we would save a little to the county; that is, he would not pay all the taxes and it would save a little and made no difference to us; we concluded to charge the county.

On page 388 the clerk of the county, Mr. Peters: "That after the whole matter had been completed, papers signed and drawn up, before starting for home, Smith gave me the money to cover the expenses of the county commissioners for their time and expense while at Lincoln, stating that, as he would have to pay a large portion of the taxes, he might as well pay these expenses now as to pay it in the shape of taxes, and I paid the county commissioners out of that money—the money Smith paid me. I was paymaster."

Recollect this; the evidence of the county, Adam Smith died, long before this evidence was taken; he might have put a different version upon it; but one-sided as it is, it shows no fraud. Of the one hundred and perhaps ninety thousand taxable land in the county, Smith had made a contract and an option for 130,000, so what he says about

taxes is very nearly true; but the evidence is that there is nothing about Smith paying the fee, and it was paid to him by the clerk or county commissioners; Sessions never spoke to Touzalin or anyone connected with the railroad about it. There is no fraud proven as to Smith, and if there was, there is no connection made with the railroad whatever.

FRAUD OF THE ATTORNEY SESSIONS.

1st. These are the facts. The county commissioners on the 18th of July, 1877, made a contract with one Adam Smith to work out some $20,000 worth of taxes. This we have shown they had a right to do. That the understanding was that when that amount was worked out, that all the taxes levied on the B. & M. lands should be abated and canceled in such a way and manner as shall be legal and proper, so as to relieve the lands from any and all liens in consequence of said taxes. The assumption was that most all of these taxes were illegal; that the legal taxes could all be worked out in this way. In order to carry that out they employed Sessions; but the authority that they gave him *went farther, and authorized him* if the taxes were not illegal to endeavor to make a better compromise than that, if, in his opinion, he could do so, and he attempts to do so. Now what passes between him and the other attorney?

On page 192, the evidence of T. M. Marquett, attorney: "Didn't you understand that he was employed by them at the regular session for the purpose of carrying out the agreement made while they were in Lincoln?"

The power that Sessions had appears in exhibit attached to his deposition. That was the power.

"Yes, I understood he was authorized to act; to render decree in conformity with that agreement or otherwise, if he could get a better showing." Further, on the same page: "I prepared the bill after that and had it filed, and made a stipulation with Mr. Sessions." Then, on page 193:

Q. You say you looked over the papers with Mr. Sessions; what papers did you look over with Mr. Sessions?

A. It was certain copies of assessment rolls and tax rolls, and all the papers necessary to determine what were legal or what were illegal taxes in Boone county upon the Burlington & Missouri River Railroad Company's land; don't recollect just exactly what papers I looked over; I think we looked over all pertaining to the matter.

Q. How long were you looking over them?

A. Several hours anyway, and the consultation finally resulted in signing a stipulation by Sessions; whether it was signed that day or not, I don't think it was, but it finally resulted in the signing of the stipulation.

It is already shown that Sessions attempted to get better terms; made some claim to more taxes being illegal than the county commissioners had agreed upon with Adam Smith. Now really what this amounted to was that the attorneys agree upon the facts as to the legality and illegality of the taxes. They agree that all the taxes are illegal except the land road tax, which can be worked out, and this matter is submitted to the judge; to the court; a statement of facts in the form of a petition. He does not render up a decree at once, because a taxpayer intervenes and contests the entering of it, and he is given leave to intervene and show why it should not be rendered.

Further stated on page 88, evidence of T. M. Marquett: "I then met Mr. Sessions in reference to this matter; I prepared a bill, and as I understood the decree would be entered probably by agreement I was not as careful in the preparation of the bill as I otherwise would be. I met Mr. Sessions as he says, and it is correct as he says that he mentioned to me he thought that the company and stockholders ought to pay some money independent of this; I did have the papers before me; if I had not, I went and got them and ran them over with Mr. Sessions, stating as I thought—let us state the facts fairly, and they amount to this: That the board of county commissioners finding out, as they must, that almost all the taxes levied were

illegal and could never be collected, and stood in the way of collecting taxes that were legally levied, that they entered into the arrangement with Adam Smith, who by the arrangement virtually became the owner of a large majority of all the taxable property in Boone county. That upon working out some $20,000 of taxes they would make no objection to the decree which would remove the cloud and the lien of these illegal taxes. It required a lawsuit to do this, and they appoint Mr. Sessions to meet the attorney on the other side and make an appearance and to see that the proper entry was made to protect them.

The petition, which will show the illegality of the taxes, was prepared by the attorney of the stockholders of the railroad company and shown to the attorney of the county. There were some little objections made to it, and the papers showing whether the taxes are legal or illegal is gone over with. Tax levies are examined; the rolls are re-examined; the attorney claims that more money ought to be paid besides the amount worked out; but it is finally agreed to and a stipulation is drawn submitting the petition with the allegations supposed to be correct as to the illegality of the taxes, *submitting the petition to the court.*"

Further appears that between the time of passing the resolution on the 4th of February and the time when the bill and facts were submitted to the court for its decision, to-wit, on the 4th of March, that some dissatisfied residents of Boone county met and hired John M. Thurston to oppose the entering of any such decree. See page 49 of printed record, where allegation in the Loren Clark bill is: 'Your orator further shows that at a mass meeting of the taxpayers of said county lately held, the said pretended action of said commissioners was expressly disaffirmed, and your orator authorized by said taxpayers to bring this bill, as well as for himself.' When the papers were submitted to the court for its decision, Thurston appeared and got leave to intervene. He did intervene by petition and cross-bill, and that petition and cross-bill were dismissed with a condition that he had leave to file a bill in chancery, and with the condition that the parties appeared to it.

The fraud is predicated almost entirely on what was done by the commissioners, the railroad company, and Adam Smith, at Lincoln, on the 30th day of January, 1878, as appears on pages 57, 58, and 59, printed record; but the court will note that there is nothing in any of these agreements, so far as the county is concerned, that go any farther than the agreement made more than seven months before with Adam Smith, as found on page 55 printed record, because at that time it was understood and agreed that almost all these taxes were illegal, and if Adam Smith did certain work, worked out a certain portion of taxes, which might be done lawfully, they would cancel in some legal manner the rest of the taxes which were considered unlawful. There is nothing further agreed to on their part. But they seem to have agreed to get Adam Smith, or as he had then organized the Nebraska Land & Live Stock Company, to get him as its president and the railroad company to agree upon something further than what Smith and the others had agreed upon, and they had got an agreement, as will appear on page 58, that both Adam Smith and and the railroad company should agree to pay the taxes levied in the years 1878 to 1882.

The reason for that agreement is as follows:

"It is hereby agreed and the Nebraska Land & Live Stock Company binds itself in the sum of $10,000 to pay all legal taxes for the years 1878 to 1882 inclusive, which may be levied upon the lands purchased by the said Nebraska Live Stock Company from the said railroad company in the county of Boone;" and below that the Burlington Company agrees to pay all legal taxes for these years. Now, that might appear to be a very strange contract were it not for the peculiar circumstances, and the parties who drew it up probably did not understand very well what a contract meant. But the object was this: The railroad company or Adam Smith at that time did not know whether they owned any of these lands or not. There was a suit pending by the United States in this court at that time to set aside the patents to all of these lands. It was not known how it would be decided. The attorney general of the United States evi-

dently believed that the railroad company had no title to any of it. The case was not likely to be heard until after the 1878 taxes would be due, and probably not till after the 1879 taxes would have to be due and payable; hence they were to pay these taxes whether they had any title or not, and so they ran the risk of working out some $20,000 of taxes whether they had any title or not. This is the secret of that peculiar contract. The 1878 tax was paid before this court decided that case, which is the case of the United States v. Burlington & Missouri River Railroad Co., 98 U. S., 334, which was decided, if I recollect aright, in April, 1879. In deciding that case the court say:

"It only remains to notice the further objection to the patents, that land to the amount of 150,000 acres on the north side of the road is included in them in lieu of land deficient on the south side. It is true the act of congress contemplates that one-half of the land granted should be taken on each side of the road, and the department could not enlarge the quantity on one side to make up a deficiency on the other; but the answer to the objection as presented by the bill, either in its original form or as amended, is that it is not shown what this land was, and the patents cannot be adjudged invalid as to any land not identified."

Now, since that decision, the secretary of the interior has adjusted the claim under the act of March 3, 1887, to provide for the adjustment of land grants made by congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and has determined that 200,000 do not belong to the company, and has made a selection again, selecting a large portion of them in Boone county; these identical lands thus taxed has demanded the reconveyance by the president of the company, and has ordered the attorney general of the United States to commence suit on refusal to convey. The time for conveyance has about run out, and, as I understand, the suit will be commenced. It is undecided to this day. Whilst this matter will not help the company in this suit, it is one of the matters that goes to show the situation of affairs at the time this compromise was made.

NO DAMAGE, BUT A BENEFIT.

The tax list of 1874, that is, the assessment rolls for the different precincts, show the following lands taxable: The B. & M. railroad, 181,166 acres; the Union Pacific, 12,981; all others, in round numbers, about 10,000 acres. By the decision of this court in the case of Railway Co. v. McShane and others, 22 Wallace, 444, it was decided that the U. P. lands were not taxable, because they were not patented at that time; so that it left taxable lands only, the B. & M. and 10,000. These lands of the 10,000 were generally those proven up for townsites. You will see that in the tax rolls there are no town lots; the other lands, according to the proof, witness Peters, on page 389, when asked what was the fair cash value of these lands at that year 1874, at that time. There being so much vacant government lands in the county, lands for sale, really there was no value fixed for them; there was no price that you could fix for them. Now, when you refer to the assessment roll of 1874, you will see that it is all odd numbered sections, except about five thousand acres. The condition was then, that, whilst almost one-half of the county was owned by the railroad, or, rather while the odd sections were owned by the railroad company, the entire even sections of the county, with the exception of 5,000 acres, were open to homesteads, and were being slowly homesteaded—taken up as homesteads—as under the law the homesteader can hold his homestead for seven years without paying any taxes or getting a patent. You can see at once the condition of the tax list. Looking again at the tax list, you will see that none of the commissioners owned any land; doubtless, all of them lived on a homestead; *owned no taxable property.*

In the case of Southern Development Co. v. Silvey, 125, U. S., 250, among the six elements which went to show fraud, the court law down one, *that it must have been acted on by complainant to his damage.* They seem to base their damages in this wise: "And if the said decree so fraudulently obtained is allowed by this honorable court to stand and remain in force, then the land of all other taxpayers in said county will be holden for the payment and satisfaction of said

indebtedness, and will have to pay large and unjust taxes for the payment of the same." But as about the only taxpayers there were at that time, or likely to be, there were Adam Smith, who, by the arrangement, was to purchase 130,000 acres, and the railroad, which would have left 50,000 acres all told; there were less than 10,000 outside of these. The county itself got worked out in building bridges and roads under its direction to the greater value than what she had ever claimed to be lawful.

The increase in the levy of *taxes*, which they complain of, fell almost entirely on the railroad and Adam Smith or the Nebraska Live Stock Association. The evidence all shows that the compromise was a benefit—a very great benefit—to the county.

POWER OF BOARD OF COUNTY COMMISSIONERS.

It is complained by the complainants that sec. 4 of art. 9 of the Constitution of Nebraska, entitled "Revenue," which, in substance, is that the legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or inhabitants thereof, or any corporation or property therein, from their, or its, proportionate share of taxes to be levied for state purpose, or do any municipal corporation, nor shall commutation for said taxes be authorized in any form whatever.

They argue from this that the county commissioners had no power to do anything in the matter.

As against this we maintain that the power to release or discharge a county from its proportion of its taxes has nothing to do with the question in this case; but we maintain the following proposition:

1st. That the board of county commissioners, having entrusted to them the *power to levy and collect* the taxes in question with the power to sue and be sued in reference to the same, had authority to compromise or *allow* a decree to be entered against them for any taxes that they may deem *illegal, upon payment of legal taxes.*

On page 56 of his brief, complainant admits that if the compromise had been made after suit commenced, it would be good

2d. That in this instance the board of county commissioners was the proper and only authority to act for the county in the premises, and it has been recognized by all courts that counties and other municipal governments could at any time compromise any doubtful right or claim, including taxes.

The law of Nebraska was, at the time the suit was commenced, as follows:

"The county commissioners are hereby authorized to employ attorneys in any case, either civil or criminal, in which their county is interested, when the cause is taken to the supreme court of this state or before any United States court, and they are hereby authorized to pay a reasonable compensation for such services."

I.

The power of the board of county commissioners at the time the suit was commenced, of the judgment in which the complainants now complain, each county was a body corporate, and the requirements of the law were as follows: "All suits or proceedings by or against the county, the name in which the county shall sue and be sued shall be the board of county commissioners of the county of Boone."

Gen. Stat. Neb. 1873, p. 233.

The power of the board is as follows:

"1st. To cause to be annually levied and collected taxes authorized by law for county purposes, not exceeding $1.50 on each $100 valuation, unless authorized by a vote of the people of the county in addition thereto sufficient to pay the interest and create a sinking fund for the payment of the principal."

There are other provisions giving them power; but it is sufficient to show that the power to levy and collect the taxes was in the hands of the county commissioners. We think it is clear that they not only had the right to under the circumstances, but it was their duty to do

the same when on the 4th day of February, 1878, among other things, they passed the following resolution and made it a part of their record:

"That, whereas, the taxes on the lands of the B. & M. R. R. R. Co. in Nebraska, in Boone county, both state, county, and school taxes are unpaid for the years 1873, 1874, 1875, 1876, and 1877;

"And whereas, the said company disputes the legality of said taxes and it is necessary to test their legality, therefore be it

"*Resolved*, That this board employ M. H. Sessions as its attorney to defend any suit that may be brought against the county or to bring any suit he may deem best to test the legality of said taxes; and if he deem that any of said taxes are illegal, he may make such compromise in the matter with the said company as he may deem best for the interest of the county in the premises; and the said M. H. Sessions is hereby authorized to enter an appearance for the county of Boone, Nebraska, in any suit which may be brought by the said Burlington & Missouri River Railroad Company in Nebraska, or by any stockholder thereof, and to take action as directed by said commissioners, and to waive issuance and service of a subpœna in the case.

"THOMAS R. WILKINSON,
"T. H. BOWMAN, *Chairman.*
"EDWIN T. BROADBENT,
"*Co. Com'rs.*

"Attest: JOHN PETERS,
"*County Clerk.*"

The case at bar is not the first instance in which county authorities have put illegal exactions on the property of railroads and were afterward anxious to make a compromise by which these illegal actions could be removed, so that legal taxes might be collected by them. The case of Adams County v. B. & M. R. R. Co., 39 Iowa, 508, is a case of this nature. In 1868 there is charged on the books of the county against the defendant taxes and interest to the amount of

$22,610.04, for various years; that is, for the years commencing in 1861 and running to 1868 inclusive—seven years' taxes. This was on the lands of the defendant within the county. The railroad company were claiming that some of these taxes were illegal, and at the general session of 1879 of the board of supervisors the defendant presented a petition to the board stating such illegal assessments and asking the board to remit such illegal taxes, and order them to be stricken from the tax book. The matter was referred to the committee of the board, who report that there is is charged against the railroad company taxes to the amount of $22,610.04 from the year 1861 to 1868 inclusive, and recommending that the sum of $12,610.04 be remitted upon payment of $10,000 by the railroad company within ten days. This proposition the company accepted and paid the money, $10,000 in full of all taxes, interest, and penalties assessed upon their lands in the county, and it was so received and accepted by the county. Now among the lands so taxed were some that the county afterward claimed as their own, and the sum of $600 was paid on these lands, and the court say that the county is estopped from claiming the land fter they had taxed it and settled for the taxes. They say (page 512):

"The county having thus recognized the plaintiff as the owner of the lands in controversy and acquired an advantage to itself, it is now estopped from denying the existence of the facts upon which such advantage was acquired. Having remained silent when it should have spoken, it must now remain silent when it desires to speak."

The court evidently recognizes the binding effect of the settlement, and predicate their estoppel upon the fact that in the settlement they were required to pay $600 taxes on the disputed land. This case afterward is quoted with approval by this court in the case of County v. American Emigrant Co., 93 U. S., 124.

The case of St. Louis, Iron Mountain & Southern R. R. Co. v. Anthony, 73 Mo., 438, was a tax case; proceeding to restrain the defendant, as collector of Washington county, from collecting certain taxes levied by the county court of said county upon property of

plaintiff; plaintiff alleging that there had been an agreement and settlement and compromise of said claim for taxes between the plaintiff and county, which had been strictly complied with on the part of the plaintiff. On page 434 the court say:

"It is now contended that the county had no authority to make the compromise in question, or any compromise whatever. We are not of that opinion. The power to sue implies the power to accept satisfaction of the demand sued for, whether the precise amount demanded or less. The taxes are levied for the benefit of the county; the *beneficial interest was in the county*, and it is for the public interest that you should have the right to settle or compromise *questionable demands which she may assert.* Must the county prosecute doubtful claims at all hazards, regardless of cost and expense, and is it for the public good that the right to settle such charges by compromise be denied her?

"It was said by the supreme court of New York, in the case of Board of Supervisors of Orleans Co. v. Bowen, 4 Lansing, 31: 'It would be a most extraordinary doctrine to hold that because a county had become involved in a litigation it must necessarily go through with it to the bitter end, and has no power to extricate itself by withdrawing, or agreement with its adversaries.' The same doctrine was sanctioned and adopted in the case of Supervisors of Chenango Co. v. ———, 4 Wend., 53."

The constitutional provision invoked by complainants was taken from the Illinois constitution; hence, it becomes important to know how that state views a question of this kind. Although the constitutional provision referred to was not adopted until November, 1875, and does not apply to the taxes for 1873, 1874, and 1875.

The case of People v. Quick et al., 92 Ill., 580, was where an application was made for a judgment against lots in block 52 of the original town of Chicago and the taxes of 1873 and 1874 and 1875, and a judgment for sale of the property was rendered, which was subsequently reversed and the case remanded to the supreme court.

On filing a mandate in the county court judgment was entered against the property for two-thirds of the taxes of the year 1875, but by the order no disposition was made of the taxes of 1873 and 1874. March term, 1879, the objectors moved the court to correct the order so as to embrace the years 1873 and 1874 for two-thirds of the taxes for these years, and to have the order so amended. The application was based on an affidavit of the attorney that he made an agreement with the county and corporation counsel that a judgment should be entered against the property for two-thirds of the taxes for each year, when by a clerical error it was only so entered for the taxes for the year 1875. The court say, page 582:

"The compromise was made by the county attorney and the city counselor and we must presume they had authority to act and bind these bodies. Even if it could have been shown that they had no authority to make the compromise, we fail to see that it would be ground for setting aside a judgment already entered if the agreement had not been consummated, or if the want of authority had been waived before the term at which the judgment is rendered had adjourned, the court would have refused to carry it out; but on the motion as the judgment had been rendered at the previous term, but incorrectly, it may be doubted whether, if the want of authority in the attorney had appeared, the court could have refused to correct the entry of the judgment so as to conform to that actually pronounced; but there was no such objection made."

In the case of Kneland v. Gilman et al., 24 Wis., was the following proposition, where a suit brought to restrain collection of a city tax on certain lots for its alleged illegality, suit compromised between the plaintiff's attorney and the city attorney, the comptroller, and treasurer, with the knowledge and concurrence of the council, on an agreement that the taxes should be released and the city should be permitted to use the lot for a certain time as a street, held that this fact constituted a valid defense against the deed of said lots for said taxes executed by the city.

Kneland v. Grimes, 24 Wis., 40.

In the case of Baileywell v. Lowell, 20 Me., 178, the town against which the creditor had an execution had the option and was authorized to raise the money by loan or by assessment, and if in the latter mode, either at once or by installment. It was held under these circumstances that the agreement by the creditor, which was accepted and complied with by the town, that if the town would at once assess for the amount required he would pay a portion of his debt, was founded upon a sufficient consideration, and was binding upon him. This authority evidently goes upon the assumption that having control of the assessment and collection of the taxes necessary to pay the debt, that they had a right to make a compromise in reference to it.

In the case of Mannix v. State on Relation of Mitchell, 17 N. E. Rep., 665, and 105 Ind., 245, Justice Niblack delivered the opinion of the supreme court of Indiana. He says: "It was regular upon its face, and that it had been, as purported to have been, entered by agreement of parties, such a judgment is binding upon the parties to it until reversed upon an appeal, or until annulled or set aside by some direct proceedings instituted for that purpose. It is impervious to a collateral attack from a party to it, however corrupt or unlawful the agreement may have been which led to its rendition." *Further on the judge says:* "Such an agreement as *regards collateral* ATTACKS, STANDING on the same footing with other judgments rendered in the usual course of legal proceedings, and is as binding upon the parties as any other judgment, so long as it remains unreversed."

II.

The case of City of St. Louis v. U. S., 92 U. S., 462, is one of this nature; the court say: "The present suit was instituted in the court of claims in 1859 by the city of Carondelet * * * The city of Carondelet, having become merged in the city of St. Louis by the act of the legislature of the state was substituted as plaintiff; a deed conveying the land in controversy to the United States was made by the city of Carondelet on the 25th of October, 1854. It is not controverted that the authority under which this was done was sufficient. If this deed be held to be otherwise valid it decides the

controversy in favor of the United States. Its validity is denied, however, on the part of plaintiff on the ground that it was without consideration, and that it was improperly coerced from the authorities of Carondelet by the officers of the government who had charge of the department of public lands, by an unjust and illegal exercise of authority in refusing to confirm and threatening to set aside the survey, which we have already mentioned, of the Carondelet commons, and exacting this deed as the condition of their acquiescence in that survey. On the other side, the deed is supported as a just and equitable compromise of a long-existing controversy, both as to the correctness of that survey and the right of the government to the ground known as Jefferson Barracks." They say in reference to this: "If, however, the commissioners—that is, the commissioners of the general land office—had no such power, and conceding that the approval of that survey by the surveyor general completed the legal title to the land it included, there can be no doubt of the right of the United States, treating the same as if it were a patent, to file a bill in chancery to set it aside as improperly made, and, on the trial of this issue, the excessive quantity of the survey, the reservation and long possession of the barracks, and perhaps other circumstances, would have made the result doubtful enough to justify the authorities of Carondelet in compromising the matter in advance of such a suit."

There is a case where the authorities of a town give up 1,700 acres of land by way of compromise, and because there was some doubt about their title the compromise was held binding. The control over the title to land certainly was not any greater than the control the county commissioners in this case had over the taxes which they had to levy and had to collect, and which we have shown were so doubtful as to legality that if a compromise in the case in point was good, certainly their compromise must have been good in this case.

1 Dillon on Corporations, 398.
Supervisors of Chenango v. Birdsell, 4 Wendell, 453.
Chamberlain v. Preble, 11 Allen, 370.

III.

JUDGMENT BY CONSENT.

It is claimed that the decree was entered by consent, and it is therefore a nullity. Although we are satisfied that if it had been entered entirely by consent it would have been a good decree, yet the evidence shows that the parties agreed upon the facts, embodied them in a petition and submitted them to the court, and that the court rendered up its decree upon it.

2d. That it was not entered by consent.

The case of Thompson v. Maxwell, 95 U. S., 398, was one where the decree was entered by consent. The court say: "A decree for carrying out a settlement and compromise of a suit is certainly not of itself erroneous. When made by consent it is presumed to be made in view of the existing facts, and that these were in the knowledge of the parties in the absence of fraud in obtaining it, such a decree cannot be impeached."

In the case of Knoblock v. Muller, 123 Ill., 565, the court say: "Decrees so entered by consent cannot be reversed, set aside or impeached by a bill of review, or by a bill in the nature of review, except for fraud, unless it be shown that the consent was not in fact given, or something was inserted as by consent when it was not consented to."

Daniels' Chancery Pleadings, 1576.
Hawes v. Chicago Building Society, 80 Ill., 248.
Winchester v. Winchester, 121 Mass., 127.
Allison v. Stark, 9 A. E., 225.

In the Pac. R. R. v. Ketcham, 101 U. S., 296, the court say: "A solicitor may certainly consent to whatever his client authorizes him, and in this case it distinctly appears of record that the company assented through its solicitor. This is equivalent to a direct finding

by the court as a fact that the solicitor had authority to do what he did, and binds us on an appeal as far as the question is one of fact only. The remedy for fraud or unauthorized conduct of the solicitor or the officers of the corporation in such a matter is by a proper corporate proceeding in the court where the consent was received and acted on, and in which proof may be taken and the facts ascertained." Now a taxpayer is the real party in interest, and he has a right to go into court and oppose the entering of this decree, which he did. He has been likened to a stockholder in a railroad company; the directors are the trustees and he the beneficiary. The county commissioners are the trustees and the taxpayers are the beneficiaries. One is the real party in interest, the other acts for him in matters of litigation. In this case the court further says, p. 297: "Here the record states in terms that the company assented to all that has been done. This is equivalent to an admission by the company on the record that the facts existed on which the decree rests; on an appeal therefore we must take all the facts as admitted. Further says, the record showing, as it does affirmatively, that the company gave its consent to the decree, we need not inquire what we would do if the case depended alone upon the consent of the solicitor. The court further says, although this appeal may have been instituted by the stockholders in their opposition to the wishes of the directors, it is still the appeal of the company, which was one of the parties to the agreement and must be treated accordingly.

In the case of United States v. Parker, 120 U. S., 89, which was an action at law commenced by the United States on the 18th of November, 1885, against Hubbard G. Parker as principal, and William M. Stewart as surety, an official bond executed on the 12th day of March, 1867, in the sum of $20,000. The conditions of which were that whereas the said Hubbard G. Parker had been appointed superintendent of Indian affairs and accepted, and so on. They sue in the case for $6,184.14, for sums expended and unaccounted for. They plead to this a former judgment of the 1st of December, 1873, which judgment was as follows: "Whereas, in open court on motion of defendants attorney, the district attorney representing the United States

consenting thereto, the following judgment was duly made and entered, to-wit: Upon motion of Ellis & King, attorneys for the defendant, and it appearing to the court that the subject-matter in this suit has been adjusted and settled by the proper parties in Washington, it is therefore ordered that this cause be and the same is hereby dismissed." It appears further, I take it from the allegations in the answer on page 92 of the act, they say that the $6,184.14 is founded upon a pretended readjustment of the account of the said defendant Parker, but the second auditor of state of the comptroller of the treasury department, made on the 25th of June, 1884, and that such pretended readjustment was made without authority, and that the said settlement and adjustment made on the 24th of June was final. Of course it appears there from the facts that the department believed that there had been a mistake in the first adjustment, and that the judgment by consent was made by mistake or by fraud. The court say in reference to that, on page 93, "The subject-matter in this suit has been adjusted and settled by the proper parties in Washington." This recital, together with the judgment founded on it, was entered by the consent of the attorney representing the United States; but this in open court officially admitted the effect of the evidence to be as claimed. If I understand the case, the court held that the attorney general, or the United States attorney, having presented to him an account which is claimed by the other party to have been settled, upon his own authority, without any legal proof of the settlement or whether it was correct, had a right to admit that he had no suit and allow the judgment to go against the United States. The case at bar is where the county board appoint a person knowing at the time they appointed him that a large proportion, if not all, of the taxes were legal and authorized him to take such steps for a compromise or to avoid the illegality as he deemed fit. The facts are all presented to this attorney and he comes to the conclusion that the taxes, about all of them, are illegal and that the county has no proper defense and it is better for the county to have the lien which is standing in the way of enforcement of other taxes removed. He examines the bill and the facts in the case and becomes satisfied that he cannot resist them, and a decree is entered. We think it is binding.

I.

The right to consent to a decree of course has its limits. The authority relied on by my friends, of Kelley v. Millen, 127 U. S., 139, was a case that when the decree was entered by consent, the court had decided that the bonds that were made valid by that decree were absolutely void and without any pleading to justify it; but in face of a bill that asked that they be declared null and void, they made the agreement that they were good, and in the face of a demurrer overruled, that is, in the face of the decision of the court that had held them void, this decree was consented to, the court hold that, as there was no law for the issuing of the bonds, the mayor had no right to agree that they were valid. His want of authority to issue them extended to the want of the authority to declare them valid. (See page 159.) And they further say "The decree of the court was based solely upon the declaration of the mayor in the agreement that the bonds were valid, and that declaration was of no more effect than the declaration of the mayor in the bill in chancery that the bonds were invalid." But the court say on page 160, "There is nothing inconsistent with this view in Nashville, etc., R. R. Co. v. U. S., 113 U. S., 261, where it was held that the decree in equity, by consent of parties and upon compromise between them, was a bar to a subsequent suit, and the claim therein set forth is among the matters compromised and settled, although not in fact litigated." But this does not militate against the proposition that where a board of county commissioners, who have entire control of the collection of taxes, and who for years have attempted to collect them, and who, through advice of counsel, have become satisfied that they are illegal, or almost all of them illegal, it being clear that almost all of the taxes are illegal and questionable whether any of them are legal, to, as a board, pass the following resolution, and on working out the lawful taxes consent to a decree enjoining what they have good reason to believe was unlawful taxes.

In the light of the case in this court, tried at the last term, if I understand its full import, it is clearly set forth in what instances a *decree by consent will be binding*, and what would not be binding.

This was done in the case of Texas R. R. Co. v. Southern Pac. R. R. Co., 137 U. S., 48, on page 45. That was a case where a decree was entered by *consent*. In the decree was the following clause: "The aforesaid decree is made to carry out the provisions in this behalf of said agreement dated November 26, 1881, which is hereby made a part of this decree, and by consent of parties and upon consideration by the court, is hereby ordered to be binding upon each and all the parties hereto in all its stipulations and agreements as therein shown, and said decree does not affect or otherwise interfere with the provisions of the agreement."

The decree has not gone any forther than that, but on page 49 it is stated that the object of the contract which was afterward embodied in the decree was this: the object of the contract expressed may be briefly discussed as in substance the settlement of pending litigation in the courts of Texas, Arizona, and New Mexico, the release and relinquishment of certain disputed rights and franchises of points west of El Paso, and the construction of plaintiff's track to make a junction with the other railroads at certain points east of El Paso. It was claimed that this decree acquired the force and effect of a thing adjudged, and hence could not be attached collaterally. This court say, on page 55:

"In reference to the decrees, the supreme court of Louisiana held that the rule invoked applied only to matters of pre-existing differences, settled and compromised, and not to agreements or contracts for future action and execution; that the subject-matter of article VI of the agreement was not a subject of contention between the parties, either as a difference or in the shape of any pending litigation, at the time the agreement was entered into; that in fact it had no existence prior to the contract itself, and had no reference to the past, but its whole operation and effect was intended exclusively for the future; that the decree carefully enumerated all the litigous matters which were in suit between the several railway companies parties to the litigation then pending; and that no other matters in the agreement were effected by the judgment." This court say: "The decrees were entered

by consent, and in accordance with the agreement, the courts merely exercising an administrative function in recording what had been agreed to between the parties, and it was open to the supreme court of Louisiana to determine upon general principals of law, that the validity of article VI was not in controversy or passed upon in the causes in which the decrees were rendered."

Now it seems to me that the court in affirming that case makes itself plain.

1st. That where there was a difference between the parties and that was settled and compromised and put into a decree that was binding, but that about which there was no contention, or difference, and was not in the shape of any pending litigation at the time of the agreement, was not and could not from its very nature become a binding decree. It simply was intended to carry out an agreement.

Parties cannot make an agreement for future action by a decree of court.

The case of B. & M. R. R. R. Co. v. Clay Co., 13 Neb., 367, was a case where among other things the board of commissioners has levied a very large sinking fund—about half the taxes they levied were sinking fund. There the county commissioners find out that it is unlawful, and on their record they rescind the same; but as there was some doubt about their power, a suit was brought to enjoin it, and in open court they agree that a decree shall go against them, and the court say they consent to the decree going against them. As to the sinking fund tax the case clearly falls within that of the U. P. R. R. Co. v. ———, 9 Neb., 448, and U. P. v. Dawson, 12 Neb., 254, and the tax is clearly illegal and the same should be enjoined. The county commissioners attempted after the levy of the tax to rescind the same, but their authority to make rescission is doubtful and the party has a right to have an apparrent cloud on his title removed. These illegal taxes in this case created a cloud on our title and Hunnewell and the stockholders of the railroad company have a right to have it perpetually enjoined and the fact that the county *consented* to it certainly in no way would affect the validity of the decree.

NOT BY CONSENT.

There is nothing to show that the court acted upon an agreement of parties. The two attorneys met and agreed upon what they deemed to be legal and illegal taxes; a petition was prepared in view of what they had agreed to; and the attorney, as he was authorized, waived the issuing of a subpœna and appeared and submitted the petition; but there is nothing to show that the court acted upon a consent; but at the suggestion of a taxpayer took it under advisement before he rendered up judgment.

On page 420 of printed record, it shows that the bill and stipulation was filed on that day (March 4, 1878), and submitted to the court on the same day. The decree was entered March 8, 1878. On the 5th of April, cross-bills and exhibits were filed by the taxpayer appearing for himself and other taxpayers. May 6th complainants filed motion to strike cross-bill, and on May 10th entered order striking cross-bill from the files on conditions.

Now these entries are explained by the following evidence, page 189:

"There were some objections made by some of the taxpayers of Boone county to the entering of the decree. They appear by counsel and objecting to have any decree entered, and asking right to interplead; hence the following order was made at the time the decree was entered: Hunnewell v. The Board of County Commissioners of Boone County, 210 D. These parties herein consented thereto, it is ordered that J. M. Thurston, Esq., may make a showing to intervene hereon in behalf of certain taxpayers of Boone county within thirty days from this date, and if said application appears to be well founded the judge of this court to make such order in vacation as may be thought proper in the premises." As you see, within thirty days they file their cross-bill to intervene. (See printed record, 166.)

The 10th of May the following entry was made in the case of Hunnewell v. County Commissioners of Boone county: This cause

coming on to be heard upon the motion of the complainant Horatio Hunnewell to strike from the files the cross-bill herein of Loren Clark, on behalf of himself and all other taxpayers of said county similarly situated, it is ordered by the court that said motion be sustained on condition that said Hunnewell, by his counsel, J. M. Woolworth, Esq., shall consent and agree to enter an appearance for said Hunnewell in the proceeding to be hereafter commenced in this court by said Clark and other taxpayers in this county to set aside and vacate the decree entered herein at the last term of this court, and for such other relief; which said Hunnewell by his said counsel in open court consents and agrees to do. And the bill afterward appears. (See printed record.) February 5, 1879, (see printed record, 324), said bill was filed by Loren Clark on behalf of himself and others similarly situated, and on the 7th day of April, 1879, the defendants appeared as agreed upon for Hunnewell and the rest and file a general demurrer. (See printed record, 359.) With these facts it cannot be said that the decree was entered by consent.

The parties having virtually agreed that the allegations of the petition were true, and then submitted the petition to the court for it to say what kind of a judgment should be entered, and the court in the face of objections by the real party in interest as to its entry finally made the entry with leave for the party to inter[redacted] cause. This is an adjudication so far that there wa[redacted] upon the court; but the parties had a right to then [redacted] court and have a judgment *rendered up by it and that the court had jurisdiction to render it.* The right of Mr. Sessions to appear as counsel was *challenged.*

1st. This is an adjudication so far as to determine the jurisdiction of the court; the court must have found that it had jurisdiction to enter the decree.

2d. That Sessions had authority to appear and to consent to the decree, and that so far as the court was concerned it was no fraud upon it, and that the parties had a right to submit the petition to the

court, and that that petition showed a good cause of action and was authority for the court to enter the decree.

The court must have found that it had jurisdiction. The allegation in the petition is that Hunnewell, who appears for himself, and all other stockholders of the company were all non-residents; hence the county and the railroad company were residents; so that jurisdiction affirmatively appears, but if it did not it would simply be an error to be corrected on appeal, not by a collateral attack of this kind. The case of Des Moines Navigation Co. v. Iowa Homestead Co., 123 U. S., is a case where the judgment was attacked not upon appeal, but as this is, because it did not show jurisdiction. In that case it showed that the Des Moines Navigation Co. and the Iowa Homestead Co. were residents of the same state; but the court say: "In 1825 McCormick v. Sullivan, 10 Whedon, 192, was decided by this court; their decree in the former suit was pleaded in bar of the action; to this a replication was filed alleging that the proceedings in the former suit were *coram non judice*, the record not showing that the complainants and defendants in that suit were citizens of a different state; this court held on appeal that the courts of the United States are courts of limited but not of inferior jurisdiction; if the jurisdiction be not alleged in the proceedings, their judgments and decrees may be reversed for that cause on a writ of error or appeal; but until reversed they are conclusive between the parties, and their privies; but they are not nullities. There has never been any departure from this rule." Further, the court say, on page 559: "To determine whether the suit was removable in whole or in part or not was certainly within the power of the circuit court; the decision of that question was the exercise and the rightful exercise of jurisdiction, no matter whether in favor of or against taking the case, whether its decision was right in this or any other respect was to be finally *determined by this court on appeal.*"

In the case of Ivens v. Bacon et al., 99 Mass., ——, the court say: "The complaint of the plaintiff is that in the original suit brought by him an entry of appeal dismissed was improperly and

fraudulently procured by the defendants. This entry was made April 7, 1862; in October, 1864, a petition to have the decree set aside was heard and denied. The present bill was filed February 27, 1867. The hearing in October, 1864, must be taken to have established the fact that the decree was not a mere nullity, or a fraud upon the court, which record for its own dignity and the due administration of justice required should be expunged from the record, for if such were its character the summary application heard before Mr. Justice Chapman must have prevailed. The question then is, whether the entry is a fraud upon the plaintiff in consequence of which he can now review or impeach the decree by the present bill."

ESTOPPEL.

The county commissioners, with full knowledge that the railroad company had sold almost all of their lands at about 30 per cent less than their value, with the understanding with the board Adam Smith should pay or take care of the taxes on them, and that afterward the said county agreeing with the said Adam Smith that if he would work out some $20,000 worth of these taxes in the county, as they believed the taxes were illegal or were doubtful, that the rest of the taxes might be forever enjoined, and provided further that said Smith was to go to large expense to people up the county, and that he fulfilled his part of the contract; that after that the county is estopped from prosecuting a suit to set aside the decree entered in accordance with that contract.

We note that the county commissioners had the full control of the levy and collection of taxes. Further, that they had the entire control of the general fund. We note further that as far as the land road tax was concerned, they would have a right to make a contract to work it out. There is some more doubt about their right to make as they did, a direct contract to work out any general fund; but we think there is no doubt that after they have made a contract, having that fund entirely under their control, having both its collection and its appropriation under their control, they were to do both; that when

they made a contract to have it worked out and the party fulfilled his contract, got his certificate of payment, that the county itself would be estopped to collect the tax.

The case of Clark v. Saline County, 9 Neb., 516, was a case as follows: In 1869 the legislature of Nebraska passed an act donating to Saline county 5000 acres of land to aid in erecting a bridge across the Blue river. The county received a conveyance of the land, and let the contract for the erection of the bridge to one H., conveying to him the land in question, and paying $500 in money. Before any part of the contract was peformed, H. assigned it to C., and conveyed the land to him; the commissioners then changed the plan of the bridge, placing one thousand additional, changed the location, to which C. consented. C. erected the bridge, which was accepted. The title to the lands having failed in consequence of the state having no title to the same, held that C. was entitled to recover the actual value of the bridge.

They quote among others the case of Pimental v. City of San Francisco, 21 Cal., 362, on page 523, which says: "The liability arises from the use of the moneys, or her refusal to refund them after their receipt; the state is not exempted from the common obligation to do justice which binds individuals; such obligation rests upon all persons whether natural or artificial. If the state obtained the money by mistake or without authority of law, it is her duty to refund it from this general obligation."

They further quote Argenti v. San Francisco, 16 Cal., 282, in which the court, which was then presided over by Justice Field, say: "The legal liability springs from the moral duty of making restitution, and we do not appreciate the morality which denies in such cases any rights to the individual whose money or other property has been appropriated. The law countenances no such wretched ethics; its end is always to do justice."

The building of the wagon road, the expenditure of $20,000, is binding against Boone County.

The county having assumed that the taxes were illegal and having consented to a decree removing the cloud from the title of the land for their own benefit as well as the benefit of Adam Smith or the railroad company, knowing at the time that the railroad company by its contract sold these lands at 30 per cent less than they would otherwise sell them, on account of the taxes, and then agreeing with Adam Smith that the taxes were illegal and that a decree might be entered to set them aside, with the understanding that he should pay out large sums of money, to bring emigration and to place other taxable property in the county, and that he did at great expense bring settlers and place a large amount of taxable property, having induced him to fulfill all these, they are estopped to say that these taxes are now legal.

The case of County v. American Emigrant Company, 93 U. S., 124, is where lands were sold by the county to the emigrant company with the understanding that they would not assess taxes upon them until the land should be conveyed; the deed was made out and put in escrow. There was some uncertainty about the time when the lands were conveyed. Controversies ensued and the county entered suit to set aside the contract; but pending the suit the parties made a settlement, and by the terms of the same the county, in consideration of certain moneys paid by the other party, consented to a decree declaring the title to the swamp lands and swamp land interests of the county to be in the emigrant company. The petition also appears to show that the emigrant company complied with all the terms of the settlement and the circuit court where the suit was pending entered a decree by consent of the parties dismissing the bill of complaint and decree; that the decree of dismissal should operate in estoppel upon the county to set up a right or title to the lands in controversy. The lands were assessed for the years preceding the decree, and the suit is brought to enjoin the taxes. The county claim in that case that the emigrant company were the legal owners of the land described in the contract by virtue of the deed from the county; that the county had no right to exempt the lands from taxation; that the agreement was unauthorized and in violation of the laws of the state; that is, to exempt the lands from taxation. The court say:

"However, during the years that these taxes were put upon that, the county had denied that the plaintiffs had title up to the time of the decree entered as above;" and the court say under these circumstances that it is denied and use this language on page 130: "In other words, the county, having during these years denied the right and title under which the plaintiff claims, is now equitably estopped from asserting that the plaintiff then had the title in order to give validity to the burden imposed. Corporations, quite as much as individuals, are held to the careful adherence of truth and uprightness in their dealings with other parties; nor can they be permitted with impunity to involve others in onerous obligations by their misrepresentations or concealments, without being held to just responsibility for the consequences of their misconduct or bad faith."

LIMITATION.

The statute of limitations in Nebraska, in cases of this kind, is as follows, found on page 630, Compiled Statutes, section 12: "Within four years * * * an action for relief on the ground of fraud; but the case of action in such case shall not be deemed to have accrued until the niscovery of the fraud."

It is claimed that the statute of limitations did not run in this instance whilst the board that made the arrangement was in power. Now, on page 75, Broadbent's evidence, when asked:

"Q. When did your time expire?
"A. In 1879 or 1880."

On page 92 of printed record, evidence of Wilkinson, one of the commissioners:

"Q. From what time and to what time were you county commissioner?
"A. I was elected in the fall of 1875 and served till the first of January, 1879, commencing in 1876."

On page 104 another commissioner, Bowman:

"Q. During what years were you county commissioner of Boone county?

"A. A part of the year 1878, while I resided there."

"Q. Was you one of the commissioners of Boone county the 30th of January?

"A. I was; yes, sir."

So the board changed; two were a quorum to do business, and the board absolutely changed on the first of January, 1879. You will note that this case was not commenced until July, 1883, four years and six months after the board of county commissioners had been changed.

The absolute control of county affairs was in the hands of new parties more than four years before this suit was commenced. But more than that, if that were an excuse, there must be *some allegation showing that that county was under hostile control, but there are no allegations* of this kind; there is no proof of this kind. We think the case of Wood v. Carpenter, 101 U. S., 140 is in line with this. The court say:

"And especially must there be distinct averments as to the time when the fraud, mistake, concealment or misrepresentation were discovered, and what the discovery is, so that the court may clearly see whether by ordinary diligence the discovery might not have been before made. This is necessary to enable the defendant to meet the fraud, and the time of this discovery."

Sterns v. Page, 7 Howard, 809.
Moore v. Greene et al., 19 Howard, 69.

The same rule was laid down in Bauben v. Bauben, 23 Howard, 190 and 191, and Badger v. Badger, 2 Wallace, 95.

It appears from that that the rule that a suit of this nature must be commenced at the earliest time possible, if made for the benefit of the defendants, in order that they may meet the proof of fraud, but

here, in this case, the man benefited by the fraud, if anybody, is Adam Smith, and they wait until after his death; they close the most important portal of truth and then commence the suit without any allegations that it might not have been commenced over four years before; anything in the way. The authorities that they invoke, 13th Cal., is a case where the party was interested himself and caused others interested with him to be elected, and absolutely held control for the purpose of perpetuating the fraud; but here there is no such proof and no such allegations.

The case of Wood v. Carpenter, 101 U. S., 135, is a case of bill in equity; the bill in that case says that for the purpose of defrauding the plaintiff and others, the defendant, in the year 1858, entered into fraudulent conspiracy with his brother, Alvin B. Carpenter, and others to incumber his real estate, and concealed away the title so that the property should not be sold to pay his debts, but in the end inure to his benefit. In pursuance of this *scheme he* CONFESSED *sundry fraudulent judgments for large sums,* and afterward made a fraudulent assignment of all his property to Wm. Walker and E. D. Allis. In this way the title was so concealed that plaintiffs were prevented from levying execution, praying, of course, to set aside the title. A demurrer was filed, raising the question of the statute of limitations, and the court in that case held the statute of limitations good.

On appeal, this court say: "The statutes of limitations are vital to the welfare of society, and are favored in law. They are found and approved in all systems of intelligent jurisprudence; they promote repose by giving security and stability to human affairs. They stimulate activity and punish negligence; while time is constantly destroying the evidence of rights they supply its place by a presumption which renders proof unnecessary. Mere delay extending to the limit prescribed is itself a conclusive bar. The bane and antidote must go together."

Further on the court say: "*The judgments are confessed of record, and he knew it. It could not have been difficult to ascertain if the facts were so, that they were shams.*"

Thus in Badger v. Badger, 2 Wall., 94, the court say:

"Courts in equity in cases of concurrent jurisdiction consider themselves bound by the statute of limitations, which govern courts of law in like cases, and this rather in obedience to the statutes than by analogy. In many other cases they act upon the analogy of the like limitation at law."

So in the case of Broderick's Will, the court appears to have acted upon the idea that the statute of limitations is obligatory as such. Says the court, after considering another point: "They would still have to encounter the statute of limitations, which expressly declares for relief on the ground of fraud can only be commenced within three years; and the statute of limitations in California apply to suits in equity as well as actions at law."

21 Wall., 518.

In the case of Societe Foncier et Agricole des Etats Unis v. Milligan, 135 U. S., where this court holds that a delay of two years in commencing proceedings to set aside judgment for usury is laches and fatal. The application to set aside the judgment alleges that the usury up to the date of the judgment amounted to $1,179.09 also alleges that ten per cent of the attorneys' fees, provided in the notes, were a cover for usurious interest and the amount thereof in fact taken and received by Milligan. Assuming all this to be true, as it must be upon demurrer, the fact remains that the defendant went two years, lacking two days, and until more than a year after all the sales had been made, before challenging the validity of the proceedings; no excuse for this delay shown. Obviously the defendant was proceeding upon a statute which we have seen has no application and independently of the statute its delay is inexcusable. Though conceding the large amount of judgment to be just, it becomes only an inconsiderable portion, its agent being served with process with knowledge; and some excuse for its long delay must be shown before the court will be satisfied in setting aside the judgment.

Blake v. Chambers 4 Neb. 95.
Hellman v. Hill, 24 Neb. 502

"Under the head of laches, in the case of Norris v. Haggen, 136 U. S., this court, on page 392, says: "It is a part of this general doctrine that to avoid the lapse of time or statute of limitations the fraud must have been one which was concealed from the plaintiff by the defendant, or it was of such a character that necessarily implied concealment. The acts which constituted the fraud, as alleged in the bill, were open and public acts, the note and mortgage were recorded in the proper public office of the proper county; the possession of defendant was obtained by judicial proceedings which were open to everybody's examination, and which were probably well known to the entire community."

In the case at bar everything is made of public record, all of the taxpayers, or all, might at least have taken part in bringing it about. The entry of the judgment was discussed immediately in the county; a public meeting is called, and everybody discusses the fact that this judgment has been entered in the county; a taxpayer intervenes for himself and others; but in the face of all this they allow between five and six years to go by before any movement is made. Clearly a case of laches.

Can the suit be maintained? In the case of Kirby v. Lake Shore R. R. Co., 120 U. S., 131, which was a suit brought April 9, 1880, to obtain a decree setting aside sundry settlements of account had by the firm of J. T. & W. D. Alexander & Co., with certain railroad corporations, defendants below, in reference to various business transactions between the parties, alleging fraud; that these settlements were obtained by fraud, the court say: "Can the suit be maintained if the cause of action is to be deemed to have accrued from the discovery of the fraud. In Burt v. Smith, 16 Wallace, 390–401, where the local statute prescribed six years for the commencement of actions for fraud, the court after observing that equity acts or refuses to act in analogy go to the statute, said: 'We think a court of equity will not be moved to set aside a fraudulent transaction at the suit of one who has been quiescent during a period longer than that fixed by the statute of limitations, after he had knowledge of the fraud or after he

was put upon inquiry with means of knowledge accessible to him.' Without inquiring whether the plaintiff was not guilty of such gross laches, in applying for relief, as deprived him of all right to the aid of equity, and giving him the benefit of the limitation of six years, to be computed from the discovery of the fraud, there seems to be even then no escape from the conclusion that the suit was not brought in time. Seven years, lacking only seven days, elapsed after the discovery of the frauds by the plaintiff's testator before suit was brought."

LACHES.

It already appears that at the time this settlement was made that Adam Smith or the Nebraska Land & Live Stock Company were about the only persons that were owners of land, and as the damage is that it will cause these owners to pay more taxes, the levy to make up these lost taxes after they were enjoined, very nearly all of it fell on the shoulders of the railroad company and Adam Smith. That all of these lands, or mostly all of them, with few exceptions, were disposed of between the entry of the judgment and the commencement of the suit, sold to innocent purchasers, and it appears further by the laws of Nebraska that the land itself and not the railroad company personally is liable for the taxes, and as in this the railroad company asks no affirmative relief, the judgment if set aside would simply revive the lien on these lands held by thousands of people, and would simply create innumerable suits, we submit that the whole thing is barred by laches.

The county waited until after the death of Adam Smith, the party who made all the arrangements of compromise with them. If there was any fraud the party that committed the fraud, because there is not a scintilla of evidence that anybody else did anything before they commenced their suit, and we think the case comes within the reasoning of McCall v. Castilar, 137 U. S., 566. Chief Justice Fuller speaking for the court says: "And where the difficulty of doing entire justice by reason of the death of the principal witness or witnesses, or from the original transaction having become obscure by

time, is attributable to gross negligence or deliberate delay, a court of equity will not aid a party whose application is thus destitute of conscience, good faith and reasonable diligence.

The case of State, ex rel. Polk Co., v. West, 68 Mo., 229, the testator of defendants having bought certain land in his own name at a sale made by order of the county court on the 23d of April, 1873, to satisfy a school mortgage, on the 20th day of September sold it at an advance, and on the 2d day of January, 1874, died. The county court knew of the purpose by the deceased soon after it was made, on the 18th day of June, 1874, the county brought this suit to recover of defendant the profits made by deceased on the resale, claiming that it was acting as agent of the county. The court say, on page 232: "Granting that Burrows was the agent of the county, granting that he suppressed bidding, granting this resulted in injury to the county, still it is by no means clear that the present proceedings should be successful for this reason; a court of equity does not lend a helping hand but to the prompt and vigilant. Here the fact that Burrows purchased was known to the county court within a short time after it occurred, and yet no complaint was made or suit instituted until months afterward, when Burrows' lips were sealed in death. Under such circumstances the laches must of itself be held fatal, for it would be to assert a doctrine to the last degree hazardous to say that the complainant, with full knowledge of all the facts on which he relies, can lie quietly by until death gives its assistance and puts the *seal of perpetual silence upon the lips of his adversary.*"

The Societe Consueri et Agricole Disates Amis v. Meligan, 135 U. S., 306, is a suit to set aside a judgement rendered June 8, 1883. About two years afterward, application was made to set aside the judgment, and the defense was laches; or the claim was that this could not be done on account of laches. Process was served upon an agent, or rather the agent accepted the process in each suit; in fact, made a voluntary appearance and consented to the judgment, and the claim is that he had no authority to receive service of process on behalf of the company, and that usurious interest was included in

the judgment; also that the time of the commencement of the suits the society had gone into liquidation in France, and that Morrell, the other petitioner, was the duly appointed liquidator. The court, after referring to a number of statutes of Texas, as this case arose in Texas, says, on pages 308 and 309: "Obviously the defendant was proceeding under the statute, which we have seen has no application, and independently of the statute, its delay unexcused is fatal; they concede the large amount of the judgment to be just, but attack a considerable portion; its agent being served with process, it is charged with knowledge, and some excuse for its long delay must be shown before the court will be justified in setting aside the judgment."

The case of Brown v. County of Buena Vista, 95 U. S., 158, is, where on the 6th day of September, 1865, Jamison, county clerk, acknowledged service of process in a case in which judgment was rendered. Judgment was rendered up in the circuit court of the United States by default October 25, 1865, for $6,259. This the county commissioners knew nothing of, but a transcript of the judgment pursuant to the laws of Iowa was filed in the clerk's office of the district court for the county on the 29th of January, 1886. The fraud that was perpetrated as to issuing of warrants by Jamison is very probable, and it may be that it extended to the warrants here in question, that is, that some of them were forgeries. The court in this case although they hold that the statute of limitations did not run, that the statute of five years did not run, but they say, "But the court of equity applies the rules of laches according to its own ideas of right and justice and hold that laches [defeats] the equity although it has been much less than the statute of limitations. The court will note in that case that the clerk of the court, the man that perpetrated the fraud on the county simply acknowledged service of and the case went by default virtually by consent. In this case Mr. Sessions had direct authority to appear for the county. Under the statute for the state of Nebraska, see Compiled Statutes, page 749, sec. 72, the voluntary appearance of a defendant is equivalent to a service.

The following authorities show that laches are attributable to the officers of counties and cities, and that their laches will bar them.

State v. West, 68 Mo., 229.
State v. Commissioners of Knox Co., 2 O. S., 147.
City of Cincinnati v. Evans, 5 O. S., 594.
School Directors v. Georges, 50 Mo., 196.
Brown v. Buena Vista County, 95 U. S. 161.

LOREN CLARK JUDGMENT. READJUDICATED.

It is claimed by plaintiff that the action of Loren Clark on behalf of himself and taxpayers, although the allegations of that bill are the same as this, was not an adjudication, because they say the defendants' attorney in this case filed a brief in which their argument was that Clark was not a taxpayer of said county, and was not competent to bring the suit. Let us see what there is. The bill, Exhibit B, on page 42 of printed brief appears in full. Among other things the bill alleges Loren Clark, on behalf of himself and others similarly situated, pending against the Burlington & Missouri River Railroad and Horatio, Hunnewell and the board of county commissioners of Boone county. The allegations; first, that he is a resident taxpayer of Boone county Nebraska, and is duly authorized by at least one-third of the taxpayers of said county, as well in amount as in number, to bring this bill of complaint as well upon their behalf as on his own, they being similarly situated. In another place he alleges that the parties confederated together for the purpose of defrauding your orator (see page 47 printed record) and all other citizens and taxpayers of said county. Further says that if the lands of said railroad shall be discharged therefrom, any arrangement to that effect, such as has been attempted by the fraud of the said several respondents, would greatly wrong and injure your orator and the other taxpayers of said county; that thereby the lands of your orator and of said taxpayers in said county would be greatly reduced in value and would be and become nearly or quite worthless.

CLARK'S INTEREST.

In the case of Neville et al. v. Clifford et al., 55 Wis., 162, the allegations are that this case was brought by taxpayers, and the allegations are that they are resident taxpayers and voters in said district, and that they bring it on their own behalf, as well as that of other taxpayers, property owners, and voters in said district who may be similarly interested in the matter set forth. Now the question was there raised that it did not appear that *he paid taxes in the district* and the court say on that: "*Although this allegation* is very general and might be construed that plaintiffs were not the owners of any taxable property subject to taxation *in said district*; yet it should be construed to mean that they are taxpayers upon property subject to taxation in the district and not upon property taxable in some other *locality*." Now the allegations in this bill are that he is a taxpayer in Boone county, and that *his lands have been taxed in that county; so the allegations are much stronger in this case* than in the one in Wisconsin. This is about the only case I have found that raised the question of what ought to be alleged by a taxpayer to show his interest, and it seems to lay down the principle, that a general allegation, that he is a taxpayer in the county or in the district to be affected as in this case, by the judgment, would be sufficient. The contention in the Wiscousin case was that he might have been a taxpayer outside of the district and not in the district. There is no allegation that he owned land or property; but it follows that if he is taxed he must be the owner of lands or property.

In the case of Sabin v. Sherman, 28 Kansas, 292, the court hold:

"As a rule one decision on the merits of the case ought to eonclude all parties with the same interest. See McMillan v. Butler, 15 Kansas, 62.

In the case of Terry v. Town of Watertown, 35 Conn., 534, they say:

"Now is the fact that present petitioners were not parties to the record in the former case of any importance; they were a part of the

same local public and as such interested in the question, and appeared as witnesses in behalf of the petitioner. *They might, had they chosen to do so, have been parties to the record.* It was a matter of public concern and they had *ample opportunity to be heard.* The whole proceeding was in the nature of a proceeding *in rem*, and so far as the judgment was binding in any it was binding in all, and the other view of it would involve all towns in endless litigation."

In the case of Harlan v. Auditor of Public Accounts, 123 Ill., 122, and 13 N. E., 163: "The Pinkney bill was filed by certain property owners, taxpayers, as representatives of a class though not formally stating that it is filed on behalf of all other taxpayers in the town, yet it constantly refers to them and the interest in questions involved. The present suit was begun by Harmon and others, also taxpayers and property owners of the town, as representatives of the same class for whose benefit the Pinkney bill was filed. The complainants in this proceeding were represented by the complainants in in the former suit and are therefore bound by the decree therein entered. The remedy in suits of this character here indicated is in the interest of a class of individuals having common rights that need protection, and in the pursuit of that remedy, individuals have the right to represent the class to which they belong. This jurisdiction, in some respects, rests on the principles of a proceeding *in rem.* We therefore think that there is sufficient identity between the parties filing the present bill and those who filed the bill in the Pinkney case to justify the pleading of the decree entered there as *res adjudicata* in this case.

The views herein expressed are sustained by the following authorities:

State v. R. R. Co., 13 S. C., 290.
Terry v. Town of Waterbury, 35 Conn., 526.
Sabin v. Sherman, 28 Kan., 289.
Smith v. Swormstead, 16 How., 303.

The suit by the taxpayers, on which the county commissioners of Boone county were made parties, is binding upon the county. In the

case of Scotland County against Hill, 112 U. S., 185, this court, speaking through Justice Waite, says. "The suit, although brought by citizens and taxpayers of the county, was in fact, the same as though brought by the county members to test the validity of the subscription which had been made to the stock of the Company and the power of the county court to bind the county to pay the bonds, which it was proposed to issue for the subscription. The county, which is itself a party through the justices of the county court, which in Missouri is the governing power and represents the county in all such matters." The suit was about the bonds and the liability of the county thereon. The decree was in accordance with the prayer of the bill and evidently concludes both Metz and the railroad company.

ADJUDICATION.

In the case of Corcoran v. Canal Co., 94 U. S., 744, the court say: "It is said that Corcoran and his co trustees, the Canal Company and the state of Maryland, were all defendants to that suit, and that as between them no issue was raised by the pleadings on this question, and no adversary proceedings were had. The answer is, that in chancery suits, where parties are often made defendants because they were not joined as plaintiffs, who are yet necessary parties, it has long been settled that adverse interests, as between co-defendants, may be passed upon and decided, and if the parties have had a hearing and an opportunity of asserting their rights, they are concluded by the decree, as far as it affects rights presented to the court, and passed upon by its decree."

In the case of Harmon et al. v. Auditor of Public Accounts and others, 123 Ill., page —, found in 13 Northeastern Rep., 161, the law on this subject is thus stated in Freeman on Judgments, 3d Ed., Sec. 178, "A judgment against the county or its legal representatives in a matter of general interest to all its citizens is binding upon the latter though they are not parties to the suit. A judgment for a sum of money rendered against the county imposes an obligation against the citizens which they are compelled to discharge; every taxpayer is

a real though not a nominal party to such judgment. It is claimed, however, that the Pinkney suit is to be regarded as a controversy between complainants, taxpayers therein on one side and the defendants therein on the other side, and not merely a controversy between the defendants, the railroad company and the town. The court say "The proceedings instituted by Pinkney and others, taxpayers, was a chancery proceeding; the present proceeding is also on the chancery side of the court. Where the action is at law the bill alleges: 'Your said orators and the other taxpayers of said town will suffer injury if your said orators and the other taxpayers of said town and an attempt to deprove your orators and the other taxpayers of said town of their property and take the property of your orators and said other taxpayers of said town for a private use without compensation; that the town be restrained from collecting said taxes upon the taxable property of said town.'"

In the case of Belot v. ———, 7 Wallace, 619, the court say: "The principle of *res adjudicata* reaches further, not only to the questions of fact and law which were decided in the former suit, but also the grounds of recovery or defense which might have been but were not presented."

Lewis v. Brown Township, 109 U. S., 162.
Scotland Co. v. Hill, 112 U. S., 183.

In the case of Lyon v. Perrin Mfg. Co., 125 U. S., 698, which is a plea in bar to a suit and the former judgment plead, after entitling the case is in words as follows: "This cause coming on for hearing, and being submitted to the court upon bill, answer and replication, and having been duly considered, the court finds, adjudges and decrees that the equity is with the defendant; that the bill of complaint be dismissed and the defendant recover costs to be taxed." The court say: "This is the record to which the court must look, and not to the statement of the clerk of the court made two years afterward. This decree on its face is absolute in its terms as an ajudication of the merits of the controversy, and therefore constitutes a bar to any fur-

ther litigation in the same subject between the same parties." The court then quotes in support of this, Durant v. Essex Co., 7 Wallace, 101 and 109, and says: "Where words of nullification such as 'without prejudice' or other terms indicating a right or privilege to take further legal proceedings on the subject do not accompany the decree, it is presumed to be rendered on its merits." Quotes likewise Bigelow v. Winslow, 1 Grey, 299 and 301. The court in that case say: "Sometimes indeed a party plaintiff in equity who, because he is not prepared with proof or for other reason desires not to go into a hearing, but rather to have his bill dismissed, or a non-suit, in an action at law, may be allowed to do so; but we believe the uniform practice in such cases is to enter 'dismissed without prejudice.'" Likewise Cooper Equity Pleading, 270, as follows: "A plea in bar constituting a dismissal of a former appeal is conclusive against a new bill if the dismissal was upon hearing, and if that dismissal be not in direct terms without prejudice. See Story's Equity Pleading, sec. 793, and authorities there cited. The court then say: "The authorities to sustain this view of the case might be multiplied, but those cited are sufficient and demonstrate the uniform rule. It is clear to this court that the decree duly dismissing the bill is in harmony with the law and is therefore affirmed."

The technical objection urged, that it does not appear that Clark had $500 of taxable property, has nothing to do with a case of this kind, because the same objection would show that the plaintiffs have no jurisdiction. The jurisdiction is determined by the amount of taxes in controversy.

The record showing jurisdiction, and the demurer a general one—and showing the decree on its merits (of dismissal), if not changed in the court where it is made or appealed from, is *res adjudicata.*

Case v. Beauregard, 101 U. S., 692.
Mercer v. Hacket, 1 Wal., 83.
House *et al.* v. Mullen, 22 Wal. 42.
Hughes v. U. S., 4 Wal., 236.
Gaylord v. Kelshaw, 1 Wal., 81.
Durant v. Essex Co., 7 Wal., 109.

This is a judgment which is conclusively presumed to be upon the merits, and is a final determination of the controversy.

Foot v. Gibbs, 1 Gray, 413.
Burrowscale v. Tuttle, 5 Allen, 377.
Butler v. Fayette Co., 46 Iowa, 328.
Jarvis v. Mitchell, 99 Mass., 531.
2 Comstock, 113.

JURISDICTION.

On page 14 of their printed brief complainants raise the point that the allegations in the complainant's bill as to where an action was brought by a stockholder for the company, are not sufficient to give the court jurisdiction. This has never been raised before, and as I have simply got the brief I will make reply to it. We think the allegations in the petition are sufficient; much stronger than were usually put in petitions of this nature prior to equity rule 94 of this court. The allegation that you requested the board of directors of said company to take efficient measures to protec' it from illegal exaction of taxes claimed, which request the said board refused, and the said company by its proper officers before the filing of the original bill herein proposed and was about to pay the said illegal taxes. Now that is pretty general; but it was all that was thought to be necessary prior to the new departure of this court in the case cited by my friend, and in that case this court gives its reasons, and have since embodied them in rule 94. There was no evidence taken upon this case only incidentally. That decision in 104 U. S. is made in the case itself; the jurisdiction of the circuit court was determined when it rendered up the judgment in question, and that is not here for review now; the case is not here for review; but it is simply whether there was any authority in procuring its entry. I append some cases to show what has been held to be good and upon which judgments have been founded. It certainly was not the intention of this court in making the decision in 104 U. S. to at the same time declare the innumerable cases which it speaks of there as being im-

properly brought and as having been finally litigated in the U. S. courts as being mere nullities, because they did not allege as much after the careful opinion of this court has believed to be necessary to entitle a stockholder to go into a court of equity. My understanding is that this court has held that whether a case has equity in it or not must be raised as the case was at the earliest opportunity; you cannot wait until you come to a judgment, and after the judgment is entered then attack collaterally the proceeding, attack it as a nullity and come in and show that there was no equity in the case which another court *had decided that there was equity in.*

The case of Hunnewell v. Burlington & Mo. River R. R. Co., 3 Dillon, 313, is where a stockholder brought two suits and where in the court below the question of *jurisdiction was* raised in both of them. This is what the court say about jurisdiction, page 314: "This is a bill to restrain the collection of taxes levied upon the land granted by congress to defendant railroad company, it is filed by the plaintiff as a stockholder of the company after he had represented to the board of directors the impropriety of paying the taxes and requested them to bring an action to enjoin their collection or otherwise take efficient measures to protect it therefrom and after they had *declined to do so because it would be a difficult and unpopular step to take.*" In that case the decision was in favor of both; see 319. The result is that the bill which relates to counties for the first 140 miles of defendant Co.'s road must be dismissed, and the bill in the second case as to lands west of the west line of range 7 in Clay county, where the road was not completed until the fall of 1872 must be sustained, and the injunction made perpetual as to lands east of said west line of range 7 in Clay county, the bill must be dismissed.

One of these cases, if not both of them, was brought to this court and decided in 22 Wallace, see Hunnewell v. Cass Co., 464. The court affirmed the decision below. I am not certain whether the decision in favor of the company west of range 7, in Clay county was brought here by the counties, or not; but the other was, and they affirmed it. Now, it would hardly do to say that that decree was a nullity or that

the decree of the lower court was a nullity. The question of jurisdiction was raised in the lower court and decided in favor of jurisdiction. That ended it.

The case of Parmlee v. R. R. Cos., or rather the numerous cases of Parmlee v. R. R. Co., Amos Paul v. R. R. Co., Bailey v. R. R. Co., and St. John v. R. R. Co., 3 Dillon, 113; on page 14 the court say: Non-resident stockholders in the St. Louis, Iron Mountain & Southern Railway Company, Pacific Railway Company, Atlantic Railway Company, the Missouri, Kansas & Texas Railway Company, and the Chicago & Southeastern Railway Company, corporations chartered and organized and operating their roads under the laws of the state of Missouri, filed in the circuit courts bills in equity for relief against illegal and excessive taxation." On page 28, the allegations to give jurisdiction or to show equity is as follows: "That after the said illegal and unauthorized assessment was made, your orators applied to and demanded of said railroad company, its board of directors and the defendants composing said board, that they should at once institute proceedings in the proper courts to prevent the collection of said taxes and the waste of said property, and to have said assessment and levy of said taxes set aside and annulled; the said company and its directors, have and did refuse so to do, or to take any action whatever in the premises, and have declared their intention not to resist the collection.

On this the respondents, on page 31, reply: respondents deny that the complainants or any one demanded of said railroad company, its board of directors, and the defendants composing said board or any of them that they should institute proceedings in the courts to prevent the collection of said taxes and to have the assessment and levy of said taxes set aside and annulled, and the respondents allege that any such pretended demand and refusal, if made, was not in good faith, but was a mere subterfuge for the purpose of giving to the United States court jurisdiction in the premises. That was a case in which the board of equalization doubled the assessment, and the allegations were that the board fixed the value of the road at $6,268,334,

and that this is three times the actual cost and value of the road. The law then was in Missouri that the various county courts were the bodies to assess railroad property, and that the state board was merely a board of equalization, and that the assessment was void as far as that was made, but that that made by the county was good, and decided that they would grant an injunction against the state board's assessment upon payment of the other; and on page 36 the court say: "Upon agreement of counsel as to the amount to be paid under the foregoing, the court made an order applicable to each of the railroad companies concerned, by which some sixty per cent of the amount assessed against each of them was to be paid by the 2d of January. Afterward, to-wit, as reported in 4th Dillon, page 35, that injunction was made perpetual, so far as the amount to be paid or the amount enjoined was concerned; the decree was one by consent.

I have hastily gathered together some five or six cases, in two of them where this same Hunnewell was the party, and which was decided in this court. Its decision in the first case gave to the counties over $100,000, or ordered the ~~counties~~ railroad to pay over $100,000 of taxes. In the second case they enjoined and removed tax liens on several hundred thousand acres of land, and they have been acted upon, the titles have been procured with the understanding that the judgment was not a nullity. As in the case at bar, it has become a rule of property; hundreds of thousands of acres of land have been sold and deeded, relying upon this decree; hence, we do not suppose that this court will hold that this decree is a nullity simply because the *allegations do not come up to what the exigencies of to-day demand they should.*

This court, in order to protect itself, some time after the decree in question, adopted a different rule as to what was necessary for a stockholder to allege to get into a court of equity; this does not disturb prior decree.

T. M. MARQUETT,
Solicitor for Defendant.